

ZONING ORDINANCE

TOWN OF AMHERST



MARCH 2005 SECTION A ARTICLES IV – IX

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LAW

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ARTICLE IV

ZONING REGULATIONS

Section 4-1 Application of Regulations

Subsequent to passage of this Ordinance, building, or land shall hereafter be used, constructed, altered, or enlarged only in conformity with regulations specified herein for the zoning district in which it is located. 3-12-63

Section 4-2 Lots of Record

Any lot of record (See Art.IX, Sec. 9-1, Definitions, Lot of Record) in the Town of Amherst prior to the effective date of this section may be occupied by any use permitted in its zoning district, regardless of its size, provided it meets all applicable zoning, setback, building, and water pollution control regulations for the Town of Amherst. Such lots shall provide for access on a publicly or privately maintained road. 3-12-63 (3-9-92) (3-13-82) (3-13-90) (3-11-03)

Section 4-3 Residential/Rural Zone (RR) 3-12-63 (3-11-93)

A. Permitted Uses

1. One-family dwelling and accessory buildings.
2. Planned Residential Development (See Article IX Definitions)
3. Farm, Agricultural or Nursery Use
4. Roadside stand for the sale of farm produce or nursery products
3-11-93
5. Home Occupation 3-11-93
6. Open Space Plan (See Article IX Definitions)
7. Affordable Housing (see Article VIII, Section 8-5) Eliminated
3-14-95
8. Non-commercial sports and recreation uses, subject to obtaining Planning Board site approval, which shall provide at minimum for applicable:
 - a) setbacks,
 - b) buffers,
 - c) sanitary facilities,
 - d) parking,
 - e) mitigation of traffic impact, and
 - f) adequate provision of emergency services,and subject to determination by the Planning Board of the following:
 - g) Such use shall not be the primary use of the lot;
 - h) Such use shall be non-commercial in nature;
 - i.) Deleted (3.6.04);

- j) Deleted (3.6.04);
- k) Such use shall be compatible with existing neighborhood uses;
- l) Such use complies with the spirit and letter of Section 3-1, Nuisance Provision; and
- m) No permanent buildings shall be permitted as part of such use, except for sheds to the extent necessary for storage of equipment for such use.

Uses involving motor-driven objects producing 60 or more decibels of sound at a range of ten feet as part of the sport or recreation are prohibited. Night lighting primarily for uses permitted under this section may be allowed by the Planning Board when more than 500 feet from any abutting lot line, but not between 9:00 p.m. and 7:30 a.m. 3-14-95

9. All family day care home facilities are subject to compliance with all current licensing procedures and all applicable health/ safety ordinances for the State of New Hampshire and the Town of Amherst. Family day care facilities are regulated by RSA: 170-E:1, 170-E:2, 204-C:72, 161-G:4 and all other applicable State Laws. In addition to the permitted uses referred to above, the Board of Adjustment may permit certain uses referred to above, to be carried on in the Residential/Rural Zone by way of special exception which uses are enumerated in Section 5-4 of the Zoning Ordinance and subject to the conditions and limitations therein imposed.

B. Area and Frontage Requirements

1. The minimum lot area shall be two (2) acres. The minimum area shall contain no wetland as defined in Art. IV, Sec. 4-11, no flood plain as defined in Art. IV, Sec. 4-10), and no slopes greater than 20 %. (3-5-74) 3-14-89 (3.6.04)

2. Each new lot shall have a minimum frontage of two hundred (200) feet on a publicly maintained road, unless frontage has been approved and recorded as reduced frontage lot/s, in which event thirty-five (35) feet shall be sufficient. (3-4-75) 3-10-87

C. Yard Requirements

1. Each structure shall be set back at least fifty (50) feet from the front lot line, or at such distance as shall conform to the line of existing buildings on that lot. (3-12-63) 3-9-82, 3-12-02

2. Except in the Historic District, each structure shall be set back at least twentyfive (25) feet from the side and rear property lines. In the case of corner property, this distance shall be increased to fifty (50) feet on that side bordering a street, lane, or public way. (3-12-63)
(3.8.05)

3. Any accessory buildings shall be set back at least twenty (20) feet from side and rear lot lines and at least fifty (50) feet from the front lot line and not exceed twenty-two (22) feet in height. The height requirement may be waived for farm structures. (3-12-63) 3-10-87 (3.8.05)

4. In the Historic District, a new structure shall be at least twenty (20) feet from the side and rear property lines or no closer than twentyfive (25) feet from the principal structure on any abutting lot, whichever is greater. (3.8.05)

5. No new principal structure shall be constructed to a height greater than thirty-five (35) feet exclusive of chimneys or cupolas, measured from the lowest average adjacent exterior elevation. No new structure shall have a floor area ratio greater than 15%. (3.6.04)

D. Prohibited uses

1. Aircraft landing fields. 3-10-98

Section 4-4 Rural Zone (eliminated 3-11-93)

Section 4-5 Northern Rural Zone (NR) 3-2-76

General: The purpose of establishing the Northern Rural Zone is the following:

1. To recognize, establish, and affirm an area of the Town in which lower density development is of itself, desirable. (3-11-86)
2. To recognize the unique rural, scenic, and natural character of a portion of Town which has remained essentially undeveloped and unchanged during the time that the remainder of the Town has experienced considerable physical development and change. 3-2-76
3. To identify a portion of Town that contains extensive areas of poor soils, steep slopes, and limited accessibility which limits the type of development which is compatible with these limitations as well as the areas in which development can suitably take place. 3-2-76
4. To ensure that future development in this area of Town be of a type that is compatible with the area's extensive physical limitations as well as its unique rural, scenic, and natural character. 3-2-76

A. Permitted Uses

1. One-family dwelling and accessory buildings. 3-2-76

2. Farm, agricultural, or nursery use. 3-2-76
3. Roadside Stand for the sale of farm produce or nursery products. 3-2-76
4. Home Occupation. 11-2-82
5. Planned Residential Development - PRD. In order to achieve the purpose of this section, Planned Residential Development shall be encouraged as the principle method of future development of this zone. (See article IX, Definitions) (11-2-82)
6. Open Space Plan (see Article IX, definitions) 3-14-89
7. Affordable Housing (see Article VIII, Section 8-5) 3-14-89 Eliminated (3-14-95)
8. Amateur non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers sanitary facilities, parking and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than 500 feet from any residential use but not after 9:00 p.m. 3-12-91
9. All family day care home facilities are subject to compliance with all current licensing procedures and all applicable health/safety ordinances for the State of New Hampshire and the Town of Amherst. Family day care facilities are regulated by RSA: 170-E:1, 170-E:2, 204-C:72, 161-G:4 and all other applicable State Laws. (3-12-91) 3-10-92

In addition to the permitted uses referred to, the Board of Adjustment may permit certain uses to be carried on in the Northern Rural Zone by way of Special Exception which uses are enumerated in Article V, Section 5-7 of the Zoning Ordinance and subject to the conditions and limitations therein imposed. 3-2-76

B. Area and Frontage Requirements

1. The lot area shall be five (5) acres. The minimum area shall contain no wetland as defined in Art. IV, Sec. 4-11, no flood plain as defined in Art. IV, Sec. 4-10), and no slopes greater than 20 %. 3-14-89 (3.6.04)
2. Each new lot shall have minimum frontage of three hundred (300) feet on a publicly maintained road, unless frontage has been approved and recorded as reduced frontage lot/s, in which event thirty-five (35) feet shall be sufficient. (3-9-82) 3-10-87

C. Yard Requirements

1. Each structure shall be set back at least fifty (50) feet from the front lot line, or at such distance as shall conform to the line of existing buildings on that lot. (3-11-80) 3-9-82

2. Each structure shall be set back at least forty (40) feet from the side and rear lot lines. In the case of corner property, this distance shall be increased to fifty (50) feet on that side bordering a street, lane or public way. (3.8.05)
3. Any accessory structure shall be set back at least thirty (30) feet from side and rear lot lines and at least fifty (50) feet from the front lot line and shall not exceed twenty-two (22) feet in height. This height requirement may be waived for farm structures. (3-11-80/3-9-82/3-12-85) 3-10-87
4. No new principal structure shall be constructed to a height greater than thirty-five (35) feet exclusive of chimneys or cupolas, measured from the lowest average adjacent exterior elevation. No new structure shall have a floor area ratio greater than 15%. (3.6.04)

D . Prohibited Uses

1. Aircraft landing fields. (3-10-98)

Section 4-6 Transition District Eliminated 3-14-78

Section 4-7 Commercial Zone (C)

General Purpose To provide commercial areas to serve major commercial and business needs of the general public. 3-14-78

A. Permitted Uses

Uses which include, but are not limited to the following: 3-13-90

1. Retail establishments 3-12-63
2. Hotel and motels. (3-12-63) 3-14-78
3. Public utility building, structure or facility. 3-14-78
4. Home Occupation. 11-2-82
5. Planned Residential Development (See Article IX Definitions) 1-2-82
6. Mixed Use Development. 3-14-89 (See Article IX Definitions)
7. Affordable Housing (See Article VIII Section 8-5) 3-14-89 Eliminated 3-14-95
8. Amateur non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than 500 feet from any residential use but not after 9:00 p.m. 3-12-91
9. All family day care home facilities are subject to compliance with all current licensing procedures and all applicable health/safety ordinances for the State of New Hampshire and the Town of Amherst. Family day care facilities are

regulated by RSA 170-E:1, 170- E:2, 204-C:72, 161-G:4 and all other applicable State Laws. (3-12-91) 3-10-92

In addition to the permitted uses referred to above, the Board of Adjustment may permit certain uses to be carried on in the Commercial Zone by way of Special Exception, which uses are enumerated in Section 5-6 of Zoning Ordinance and subject to the conditions and limitations therein imposed. (3-12-63) 3-9-82

B. Area and Frontage Requirements

1. The Minimum lot area shall be one (1) acre. 3-14-89 (3-11-97)
2. Each new lot shall have a minimum frontage of two hundred (200) feet on a publicly maintained road, unless frontage has been approved and recorded as reduced frontage lot/s, in which event thirty-five (35) feet shall be sufficient. (3-14-78/3-9-82)

C. Yard and Building Requirements

- 1.a) Each new structure shall be set back either fifty (50) or one-hundred feet from the public road right-of-way of New Hampshire Route 101A. (3-14-89) 3-10-92
- (1) The fifty (50) foot option requires that a natural vegetation of landscaped area only shall exist between the structure and the highway, excepting driveways and permitted signs. (3-14-89) 3-10-92
- (2) The one-hundred (100) foot option allows parking areas to the front of the structure, which parking areas shall be set back a minimum of fifty (50) feet from the edge of the highway right-of-way. 3-14-89
- (3) Any permitted enlargement of pre-existing structures shall be beyond the fifty (50) foot setback line. 3-14-89
- 1.b) Each new structure shall be set back fifty (50) feet from the edge of the public road right-of-way on all roads within the Commercial Zone. 3-10-92
2. Each new structure or addition to a structure shall be set back thirty (30) feet from side and rear lot lines. 3-14-89

75) 3. Any lot bordering a residential zone or an existing residential use shall have a landscaped buffer between any buildings and such residential zone or use.(3-4-

4. No structure shall be constructed to a height greater thirty-five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation. 3-11-86

5. The floor area ratio shall be a maximum of twenty-five (25%) percent. (3-12-85) 3-10-87

6. A minimum of thirty (30%) percent of the area of any lot shall remain landscaped open space and not be utilized for construction (including parking). 3-4-75

7. There shall be no more than one access to any lot wherever desirable for traffic safety and consideration shall be given to combining access points where two or more lots are being currently developed. 3-4-75

8. All storage and/or equipment parking areas shall be fenced, screened, landscaped, or otherwise protected from view. 3-14-78

D. Prohibited Uses

1. Aircraft landing fields (3-10-98)

Section 4-8 Limited Commercial Zone (LC) 3-2-76

General Purpose: To provide commercial area to serve limited commercial and business needs of the general public.

A. Permitted Uses

1. Retail, personal service and business establishment of a type consistent with the purpose of this zone to serve limited commercial needs of various neighborhoods in Town. The foregoing shall include, but not necessarily be limited to:

- a. retail grocery, meat, produce, drugs, stationery, hardware, baked goods 3-2-76

- b. barber and beauty shops 3-2-76
 - c. shops for the collection and distribution of clothing materials for dying and cleaning establishments 3-2-76
 - d. banks 3-2-76
 - e. coffee or sandwich shop (except for drive-in or fast service types). 3-2-76
2. Business and/or professional offices for individual or group practice, including doctors and dentists (including medical or dental clinics), lawyers counseling services, engineers, architects, planners, insurance and accountants. 3-2-76
 3. Veterinary clinic. 3-2-76
 4. Gasoline service station which may have a garage for repair to automobiles only but not to include body or fender repair, paint spraying, or used car sales lots. (3-2-76) 3-12-91
 5. Interior storage. (3-2-76) 3-8-88
 6. Interior recreational establishments. 3-2-76
 7. Home occupation. 11-2-82
 8. Planned Residential Development (See Article IX Definitions) 11-2-82
 9. Mixed Use Development (See Article IX Definitions) 3-14-89
 10. Affordable Housing (See Article VIII Section 8-5) 3-14-89 (eliminated 3-14-95)
 11. Amateur non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than 500 feet from any residential use but not after 9:00 p.m. 3-12-91
 12. All family day care home facilities are subject to compliance with all current licensing procedures and all applicable health/safety ordinances for the State of New Hampshire and the Town of Amherst. Family day care facilities are regulated by RSA: 170-E:1, 170-E:2, 204-C:72, 161-G:4 and all other applicable State Laws.
(3-12-91) 3-10-92

In addition to the permitted uses referred to above, the Board of Adjustment may permit certain uses to be carried on in the limited Commercial Zone by way of Special

Exception which uses are enumerated in Section 5-9 of the Zoning Ordinance and subject to the conditions and limitations therein imposed. 3-11-86

B. Area and Frontage Requirements

1. The minimum lot area shall be one (1) acre. (3-2-76) (3-14-89) (3-11-97)
2. Each new lot shall have a minimum frontage of two hundred (200) feet on a publicly maintained road, unless frontage has been approved and recorded as reduced frontage lot/s, in which event thirty-five (35) feet shall be sufficient. (3-14-78/3-9-82) 3-10-87

C. Yard and Building Requirements

1. Each new structure shall be set back either fifty (50) or one-hundred (100) feet from the edge of the public road right-of way.

The fifty (50) foot option requires that a natural vegetation or landscaped area only shall exist between the structure and the highway, excepting driveways and permitted signs.

The one-hundred (100) foot option allows parking areas to the front of the structure, which parking areas shall be set back a minimum of fifty (50) feet from the edge of the highway right-of-way.

Any permitted enlargement of pre-existing structures shall be beyond the fifty (50) foot setback line.

On corner lots, parking areas shall be screened from the highway with fences, landscaping and natural vegetation. 3-14-89

2. Each new structure or addition to a structure shall be set back thirty (30) feet from side and rear lot lines. 3-14-89

3. Any lot bordering a residential zone or an existing residential use shall have a landscape buffer between any buildings and residential zone or use. 3-2-76

4. No structure shall be constructed to a height greater than thirty-five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation. (3-2-76/3-12-85) 3-11-86

5. The floor area ratio shall be a maximum of twenty (20%) percent. (3-2-76/3-12-85) 3-10-87

6. A minimum of thirty (30%) percent of the area of any lot shall remain landscaped open space and not be utilized for construction (including parking). 3-4-75 (3-13-31) 3-2-76

7. There shall be no more than one access to any lot wherever desirable for traffic safety and consideration shall be given to combining access points where two or more lots are being concurrently developed. 3-2-76

8. All storage and/or equipment parking areas shall be fenced, screened, or otherwise protected from view.

D. Prohibited Uses

1. Aircraft landing fields. (3-10-98)

Section 4-9 Industrial Zone

A. Permitted Uses

1. Light Manufacturing 3-12-63
2. Assembly of previously prepared materials 3-12-63
3. Metal working 3-12-63
4. Equipment sales and service 3-12-63
5. Creamery, bakery and soft drink bottling plants 3-12-63
6. Distribution plants, service industries and parcel delivery 3-12-63
7. Laboratories 3-12-63
8. Corporate and business offices compatible with other permitted uses in the zone and/or professional offices for individual or group practice, including doctors and dentists (including medical and dental clinics), counseling services, engineers, architects, planners, insurance and accountants. (3-14-78) 3-10-87
9. Wholesale business and storage 3-14-78
10. Storage yards (but not junk yards) 3-14-78
11. Banks 3-10-87
12. Coffee or sandwich shops (except for fast service types) 3-10-87
13. Veterinary clinic 3-10-87
14. Interior recreational establishments 3-10-87
15. Home occupation 11-1-82
16. Public utility buildings, structures or facility (3-14-78) 3-10-87
17. Affordable Housing(See Article VIII, Section 8-5)3-14-89 Eliminated
3/14/95
18. Amateur non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than 500 feet from any residential use but not after 9:00 p.m.
3-12-91
19. Retail Establishments - change of use permit from the Planning Board required for existing buildings. (adopted 3-11-97)

B. No Land, building or structure shall be used for any of the purposes enumerated below:

- a. Manufacture or storage of explosives in bulk quantities greater than twenty-five (25) pounds. 3-12-63
- b. Fertilizer manufacture 3-12-63
- c. Glue manufacture 3-12-63
- d. Petroleum refining 3-12-63
- e. Smelting of metallic ores 3-12-63
- f. Preparation of cement, gypsum, lime or plaster of paris 3-12-63
- g. Manufacture of acids 3-12-63
- h. Fat rendering in preparation of grease or tallow 3-12-63
- i. Animal reduction or garbage dumping except sewage disposal or incineration done by the Town of Amherst. 3-12-63

C. Area and Frontage Requirements

- 1. The minimum lot area shall be one (1) acre. (3-14-78/3-13-84) 3-14-89
- 2. Each lot shall have a minimum frontage of two hundred (200) feet on the principle route of access. (3-14-78) 3-13-84

D. Yard and Building Requirements

- 1. Each new structure shall be set back either fifty (50) or one-hundred (100) feet from the edge of the public road right-of-way. 3-14-89

The fifty (50) foot option requires that a natural vegetation or landscaped area only shall exist between the structure and the highway, excepting driveways and permitted signs. 3-14-89

The one-hundred (100) foot option allows parking areas to the front of the structure, which parking areas shall be set back a minimum of fifty (50) feet from the edge of the highway right-of-way. 3-14-89

Any permitted enlargement of pre-existing structures shall be beyond the fifty (50) foot setback line. 3-14-89

On corner lots, parking areas shall be screened from the highway with fences, landscaping and natural vegetation. 3-14-89

- 2. Each new structure or addition to a structure shall be set back thirty (30) feet from side and rear lot lines. 3-14-89

- 3. Any lot bordering a residential zone or an existing residential use shall have a landscaped buffer between any building and such residential zone or use. 3-4-75

- 4. No structure shall be constructed to a height greater than thirty-five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation, excepting Industrial structures south of the Boston & Maine Railroad

which shall not exceed fifty (50') feet for inhabited and eighty (80') feet for uninhabited structures. (3-4-75/ 3-11-86) 3-12-91

5. The floor area ratio shall be a maximum of forty (40%) percent. (3-4-75) 3-10-87

6. A minimum of thirty (30%) percent of the area of any lot shall remain open space and not be utilized for construction including parking. 3-4-75 (3-13-01)

7. There shall be no outside storage of materials or equipment between the front of any buildings and the street. All storage and/or equipment parking areas shall be fenced, screened, landscaped or otherwise protected from view. 3-4-75

E. Access

to any lot with frontage on Route 101A shall be by such other streets as are available and not by Route 101A unless no other access is available. 3-14-78

Section 4-10 Flood Plain Conservation District 3-10-70 (3-11-97)

General: In the interest of public health, convenience, safety and welfare, the regulations of this district are intended to guide the use of areas of flood plain subject to flood water, and to encourage the retention of open land so as to constitute an harmonious and appropriate physical development of the Town, as developed from the Master Plan. The specific intent of this district is:

1. To prevent the development of buildings and uses in areas that are unsatisfactory and hazardous due to the threat of flooding.
2. Protection of natural flow and drainage.

Definition: The Flood Plain Conservation District is hereby determined to be those areas of land within the Town of Amherst designated within the 100 year flood boundary on a series of maps entitled “ National Flood Insurance Program, FIRM, Town of Amherst, NH, Hillsborough County”, and consisting of twelve individual maps prepared by the Federal Insurance Administration, a division of the U.S. Department of Housing and Urban Development, dated July 2, 1979. (9-22-79)

Item 1 Definition of Terms: The following definitions shall apply only to this Floodplain development Ordinance, and shall not be affected by, the provisions of any other ordinance of the Town of Amherst, NH.

“Area of shallow flooding” means a designated AO, AH, or VO zone on the Flood Insurance Rate Map (FIRM) with a one-percent or greater annual possibility of flooding to an average depth of one to three feet where a clearly defined channel does not exist,

where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of Special Flood Hazard” is the land in the floodplain within the Town of Amherst subject to a one-percent or greater possibility of flooding in any given year. The area is designated as zone A on the FHBM and is designated on the FIRM as zones A, AO, AH, A1-30.

“Base Flood” means the flood having a one-percent possibility of being equaled or exceeded in any given year.

“Basement” means any area of a building having its floor subgrade on all sides.

“Building” - see “structure”

“Breakaway wall” means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation.

“FEMA” means the Federal Emergency Management Agency.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from: 1) the overflow of inland or tidal waters, and (2) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map” (Floodway Map) is an official map of the Town of Amherst, on which FEMA has delineated the “Regulatory Floodway”. This map should not be used to determine the correct flood hazard zone or base flood elevation, the Flood Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.

“Flood Elevation Study” means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood - related erosion hazards.

“Flood Insurance Rate Map” (FIRM) means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Amherst.

“Flood Insurance Study” - see “Flood elevation study”.

“Floodplain” or “Flood-prone area” means any land area susceptible to being inundated by water from any source (see definition of “Flooding”).

“Flood proofing” means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

“Floodway”- see “Regulatory Floodway”.

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long- term storage or related manufacturing facilities.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic Structure” means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1) By an approved state program as determined by the Secretary of the Interior, or
 - 2) Directly by the Secretary of the Interior in states without approved programs.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of

vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days.

“Mean Sea Level” means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a communities Flood Insurance Rate Map are referenced.

“100-Year flood”- see “base-flood”

“Recreational Vehicle” is defined as:

- A. Built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projection;
- C. Designed to be self propelled or permanently tow able by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Regulatory floodway” means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.

“Special flood hazard area” means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on an FHBM or FIRM zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E. (See - “Area of Special Flood Hazard”)

“Structure” means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

“Start of Construction” includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair,

reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however include any project for improvement of a structured required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a “historic Structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

“ Water surface elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in floodplains.

A. Permitted Uses

Any of the following uses, which may require a permit, that do not result in the erection of any structures or require the addition of fill, and that are otherwise permitted by the Zoning Ordinance.

1. Minor fences, docks, wharfs, boat houses
2. Agriculture
3. Forestry
4. Recreational purposes such as accessory tennis courts, swimming pools, playing fields

5. Golf courses
6. Parking lots, driveways, roads
7. Non-commercial sports and recreation uses, subject to obtaining Planning Board site approval, which shall provide at minimum for applicable:
 - i) setbacks,
 - ii) buffers,
 - iii) sanitary facilities,
 - iv) parking,
 - v) mitigation of traffic impact, and
 - vi) adequate provision of emergency services, and subject to determination by the Planning Board of the following:
 - vii) Such use shall not be the primary use of the lot;
 - viii) Such use shall be non-commercial in nature;
 - ix) Deleted (3.6.04);
 - x) Deleted (3.6.04);
 - xi) Such use shall be compatible with existing neighborhood uses;
 - xii) Such use complies with the spirit and letter of Section 3-1,

Nuisance Provision.

- xiii) No permanent buildings shall be permitted as part of such use, except for sheds to the extent necessary for storage of equipment for such use; and
- xiv) The Conservation Commission has determined, and the Planning Board agrees, that such use shall not: a) contribute to pollution of surface or groundwater; b) damage or destroy habitats or reproductive areas for plants, fish, and wildlife of importance; c) eliminate, depreciate, or obstruct the commerce, recreation or aesthetic enjoyment of the public; d) be detrimental to adequate ground water levels; e) adversely affect stream channels and their ability to handle runoff of water; or
- f) disturb or reduce the natural ability of wetlands to absorb floodwaters and salt.

Uses involving motor-driven objects producing 60 or more decibels of sound at a range of ten feet as part of the sport or recreation are prohibited. Night lighting primarily for uses permitted under this section may be allowed by the Planning Board when more than 500 feet from any abutting lot line, but not between 9:00 p.m. and 7:30 a.m.

8. Recreational vehicles placed on sites within the flood zone shall be either; a) be on site for fewer than 180 consecutive days, b) be fully licensed and ready for highway use; or c) meet all standards of Section 60.3 (b) (1) of the National Flood

Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in Paragraph c(6) of Section 60.3.

Item III.

The Zoning Administrator shall review all building permit applications for new structures or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- i.) be designated (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- ii) be constructed with materials resistant to flood damage;
- iii) be constructed by methods and practices that minimize flood damages; and
- iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Item IV.

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Zoning Administrator with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

Item V.

For all new or substantially improved structures located in Zones A, A1-30, AE, AO or AH, the applicant shall furnish the following information to the Building Inspector:

- (a) the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- (b) if the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.
- (C) any certification of flood proofing.

The Zoning Administrator shall maintain for public inspection, and shall furnish such information upon request.

Item VI.

The Zoning Administrator shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

Item VII.

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Zoning Administrator, in addition to the copies required by RSA 482-A:3.

2. The applicant shall submit to the Zoning Administrator, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

3. Along water courses with a designated Regulatory Floodway no encroachments, including fill, new construction substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. In zone A the Zoning Administrator shall obtain , review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that development meet the floodway requirements of this section.

4. Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1-30 and AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Item VIII.

1. In special flood hazard areas the Zoning Administrator shall determine the 100 year flood elevation in the following order of precedence according to the data available:

a. In zones A1-30, AH, AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM or FHBM.

b. In unnumbered A zones the Zoning Administrator shall obtain, review, and reasonably utilize any 100 year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

c. In zone A0 the flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM at least 2 feet.

2. The Zoning Administrator's 100 year flood elevation determination will be used as criteria for requiring in zones A, A1-30, AE, AH, AO, and A that:

- a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood elevation;
- b. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:
 - (i) be so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - (iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;
- c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind force;
- d. All recreational vehicles placed on sites within Zones A1-30, AH, and AE shall either:
 - i. be on the site for fewer than 180 consecutive days;
 - ii be fully licensed and ready for highway use; or
 - iii meet all standards of section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of section 60.3.
- e. For all new Construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements: 1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of

floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria; A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

f. Proposed structures to be located on slopes in special flood hazard areas, zones AH and AO shall include adequate drainage paths to guide flood waters around and away from the proposed structures.

Item IX: Variances and Appeals.

1. Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
 - (a) that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
 - (b) that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
 - (c) that the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of Insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

B. Special Provisions

All plans for new structures or substantial additions to existing structures or other development proposed in flood hazard areas shall be certified by a registered professional engineer or architect as complying with the revised November 24, 1989 Model Flood plain Development Ordinance, developed by the Federal Emergency Management Agency. (3-14-89) 3-13-90

Section 4-11 Wetland Conservation District

General The Wetland Conservation District is hereby determined to be those areas identified or delineated as poorly drained or very poorly drained soils, or as bodies of water by the National Cooperative Soil Survey through field mapping surveys completed in 1970 and shown on its field mapping photographic sheets for the Town of Amherst, New Hampshire. The Wetland Conservation District as herein defined as shown on a map designated as:

“U.S. Department of Agriculture Soil Conservation Service
Town of Amherst, Hillsborough County, New Hampshire
Soil Survey, November 1970

Amherst Wetlands Conservation District Map adopted 1973
Amended March 1975 (3-4-75) and is a part of the ‘Zoning Map’
of the Town of Amherst, NH

In all cases where the Wetland Conservation District is super-imposed over another zoning district in the Town of Amherst, that district whose regulations are the more restrictive shall apply.

In the event an area is incorrectly designated as being poorly drained or very poorly drained soils on the Town of Amherst Wetland Conservation District map and evidence to that effect is satisfactorily presented to the Building Inspector or Zoning Administrator, the restriction contained in this section shall not apply. Conversely, in the event that an area not so designated has poorly drained or very poorly drained soils within the meaning of the aforementioned definition, then the restriction contained in this section shall apply. Such evidence may be obtained by adequate on-site soils investigation and analysis conducted by a certified soil scientist or certified wetland scientist. As amended 3-11-80

The location of a wetland boundary in any particular case must be determined by on-site inspection of all three characteristics of wetlands, namely, hydrology, hydric soils, and hydrophytic plants. Said inspections shall conform to standards set forth in:

Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987.

Field Indicators for Identifying Hydric Soils in New England, Version 2, New England Interstate Water Pollution Control Commission, 1998.

Chapters Wt 100-800 of the NH Code of Administrative Rules, April 21, 1997, as amended.

In the interest of public health, convenience, safety and welfare, the regulations of the Wetland Conservation District are intended to guide the use of areas of land that

have soils that are saturated or inundated for extended periods of time during the growing season, and their surrounding buffers.

The specific intent of this District is:

1. To prevent the development of buildings and land use on naturally occurring wetlands, which would contribute to pollution of surface and ground water. 3-6-73
2. To prevent the destruction of natural wetlands which provide flood protection, recharge of ground water suppliers, retention of sediments, attenuation of nutrients, augmentation of stream flow during dry periods, and important wildlife areas. 3-6-73
3. To prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of inharmonious use of wetlands. 3-6-93
4. To encourage those uses that can be appropriately and safely located in the wetland area. 3-6-73
5. To protect water suppliers, aquifers and aquifer recharge areas.

A. Permitted Uses

Any of the following uses, which may require a permit, and that do not result in the erection of any structure and that are otherwise permitted by the Ordinance:

1. Forestry - tree farming (see part B) 3-6-73
2. Agriculture (see Part B) 3-6-73
3. Well and well lines 3-11-80
4. Wildlife refuge 3-6-73
5. Parks and such recreation uses as are consistent with the purpose and intentions of Section 4-11 3-6-73
6. Conservation areas nature trails 3-6-73
7. Open space as permitted by subdivision regulations and other sections of this Ordinance 3-6-73
8. Minimal impact crossing of wetland and their buffers by roads, bridges and driveways, subject to Planning Board review and approval, and only when there is no feasible alternative. 3-12-91 (3-11-03)
9. Other uses consistent with the intent of the ordinance as approved by the Planning Board pursuant to Part D below. 3-13-01

B. Special Provisions

1. No wetland may be used to satisfy minimum lot size requirements in any zone.

2. No septic tank or leach field may be located closer than seventy-five (75) feet to any wetland.
3. No structure shall be erected within fifty (50) feet of any wetland.
4. A naturally vegetated buffer of twenty-five (25) feet shall be maintained from the edge of any wetland.
5. A naturally vegetated buffer of one hundred (100) feet shall be maintained from the edge of any Public Water Protection Wetland, as defined in Part C of this ordinance.
6. Except as determined by the Planning Board there shall be no alteration of contours and no filling of land within a buffer. (3-11-03)
7. Except as provided for in A.8., no structures, parking areas or driveways (paved or unpaved) shall be located within a buffer. Within a buffer, the footprint of an existing structure, parking area or driveway shall not be expanded. Forestry and tree farming in buffers shall be conducted in accordance with Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, published by the NH Department of Resources and Economic Development, as amended. (3-11-03)
8. Agricultural activities in buffers shall be conducted in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, published by the NH Department of Agriculture, as amended. Such activity is prohibited within a 25 ft. buffer. (3-11-03)
9. A “Water Resource Management Plan” which provides for substitutes for wetlands restrictions and setbacks may be submitted to the Planning Board. See Part D. (3-11-03)
10. Nothing in this Part B, Special Provisions shall be construed as prohibiting the permitted uses contained in Part A above. (3-11-03)

C. Public Water Protection Wetlands

The town’s wetlands ranked highest for their critical role in protecting public water supplies shall be designated as Public Water Protection Wetlands (See the Amherst Wetland Assessment and Prime Wetland Designation Project report dated January 2000).

Witches Brook
Theriaults Marsh
Stump Pond
Nolan Pond

Ponemah Bog
Glover Beds
Homestead Commons

Thibodeau Bog
Ponemah Hill Complex
J&J Party Outlet

Maine RR Sand Pit	Belden's Mill	Currier Lumber
Baboosic Lake	North Baboosic	Boardman
Horace Greeley Triangle	Jasper Valley	Baboosic Forested
Weimont	Honey Pot Pond	Black Forest
Souhegan Three	Curtis Well	House of Faith
Beaver Brook South	Holt Road	Souhegan Street
Meeting Place	Currier Land	Pond Parrish
North Embankment Road	Corduoy/Dog Pound	Pulpit Meadow
Souhegan Two	St. Patricks Cemetery	Little Baboosic
Souhegan One	Post Road & Courthouse	Great Meadow
Ross Bird Sanctuary	Hertzka Atherton	
Pond Parish Outlet	Southfield	

In addition, wetlands located within NH Public Water Supply Wellhead Protection Areas (delineated by NH Department of Environmental Services) and wetlands within the Pennichuck Brook Watershed as shown on the plan titled shall be designated Public Water Protection Wetlands.

D. Water Resource Management Plans Alternative use

The use restrictions and setbacks established in Parts A and B above are important measures intended to protect wetlands, ground water, surface water, and important wildlife resources. Part D of the ordinance is intended to provide for the development of a comprehensive plan for the protection of these resources as part of the site plan approval process in lieu of the standard requirements of the ordinance listed in Parts A and B above. Under the provisions contained in this part, the Town and landowners are offered greater flexibility in establishing effective controls through development, implementation and maintenance of site specific Water Resource Management Plans. When meeting the criteria below, and when the owner so elects, a site-specific plan may be adopted, upon review of the Conservation Commission, Pennichuck Water Works (if required), and approval of the Planning Board, for the protection of water and wildlife resources.

The provisions of this part are applicable, for modification of or an alternative to the provisions contained in Parts A and B above, to any parcel of land to be developed or otherwise altered if one or more of the following conditions are met:

- a. if the parcel is greater than 10 acres;
- b. if the plan involves a subdivision of a parcel into 5 or more lots;
- c. if the parcel contains wetlands area of greater than 2.0 contiguous acres, or;
- d. if the parcel falls within the standard setbacks of Public Water Protection Wetlands defined in Part C above.

General Requirements

Each Water Resource Management Plan must conform to the intent of the ordinance and provide for effective, long term design and engineering controls to minimize the impacts of development and other uses adjacent to wetland areas. These plans are intended to provide for alternative controls to the setbacks and use restrictions. In no case should this section be interpreted to allow wetland degradation.

1. Mitigation plans are to incorporate controls that achieve a “best available technology” (BAT’s) standard for engineering design.
2. As a minimum, site activities and uses are to reflect applicable Best Management Practices as issued by the New Hampshire Department of Environmental Services or other state agency.
3. Plans must incorporate documentation of all monitoring, maintenance and reporting provisions and procedures as well as any needed legal provisions to ensure future compliance with the plans.
4. A minimum 25 ft. undisturbed, naturally vegetated buffer shall be established under a Water Resource Management Plan for all Public Water Protection Wetlands. The extent of the buffers must reflect the nature and value of the resources to be protected as defined in Sec. 4-11, General 2. (3-11-03)
5. Building setbacks from the edge of the wetland may vary but in no case shall the setback be less than 50 feet.
6. Plans for any residential development that contain more than 2.0 acres of Public Water Protection Wetlands, or a commercial or industrial development should include surface and groundwater monitoring implementation methods and timetables. In addition to hazardous chemicals stored or used on the site, monitoring should include nutrients contributed by fertilizer applications, pesticides and herbicides of concern, chlorides, coliform bacteria and BOD. A program for reporting baseline and periodic testing for at least two years is required.

Water Resource Management Plan Requirements

A minimum of forty-five (45) days prior to submission to the Amherst Planning Board, each Water Resource Management Plan shall be presented to the Amherst Conservation Commission for review, and also to Pennichuck Water Works for review if the parcel is within the Pennichuck Brook watershed.

Each Water Resource Management Plan submitted to the Planning Board for review shall contain the following provisions:

1. Identification of the risks to water resources from the proposed site activities or development and site specific restrictions to eliminate or control uses and activities that produces impacts;
2. Identification of ecologically sensitive areas and features, including but not limited to, water supplies and water resources, wildlife and wildlife habitats or other resources within the influence of the site that warrant high levels of protection;

3. Site design and engineering controls to minimize both on-site and off-site (within 500 ft.) impacts to water resources;
4. Storm water provisions shall include at a minimum:
 - a. Post development storm water peak (for 10-year storm) must be less than or equal to predevelopment storm water peak.
 - b. Post development infiltration (2-year storm) must be greater than or equal to predevelopment storm water peak.
 - c. Storm water facilities must have a solids removal area that is independent of infiltrative area. Solids removal area must be easily cleaned. Storm water facilities must be designed for grease and oil removal (either mechanical or biological with plants);
5. A letter from the New Hampshire Natural Heritage Inventory containing information on any rare or endangered species within the project area, or within 500 ft. of the nearest wetland/buffer impact site, whichever is furthest;
6. Written provisions for the protection of any rare or endangered species as referenced above or known by the Conservation Commission;
7. Provisions for the protection of the ecologically sensitive areas and features of the site;
8. Building and storage area design to prevent releases or spills of hazardous materials;
9. Prohibitions on the use of lawn chemicals or implementation of an integrated pest management plan to govern the use of lawn chemicals;
10. Prohibition on the use of salt for winter road and parking lot maintenance and sedimentation controls for winter sand use;
11. Provisions for periodic groundwater monitoring and reporting, if required;
12. Provisions for periodic surface water monitoring and reporting, if required;
13. A plan showing the edge of wetlands within 500 ft. of the nearest impact area, and all setback/buffer areas for any Public Water Protection Wetland;
14. Provisions for future maintenance of the engineering design, operating and monitoring controls to be implemented;
15. A copy of the Pennichuck Water Works review report, if required;
16. A copy of the Amherst Conservation Commission review report.

Section 4-12 Watershed Protection District

General In the interest of public health, convenience, safety and welfare, the following regulations are intended to guide the use of areas of land with extended periods of high water table and lands draining into wetlands, brooks, ponds or water supply areas; to control building and land uses which would contribute to pollution of surface and ground water; to prevent the destruction of watershed areas which provide flood protection, recharge or ground water supply, and augmentation of stream flow during dry periods; to control construction and prevent alteration of watershed areas where such activities would significantly alter the surface water drainage (pattern and concentration)

and/or cause excessive erosion; to prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of inharmonious use of watershed areas; and to encourage those uses that can be appropriately and safely located in this District. 3-2-76

1. Definition of Watershed Protection District

Watershed Protection District shall mean an area of land surrounding bodies of water for the purpose of controlling building and land uses, which uses could contribute to the pollution of surface and ground water. Watershed Protection district shall also mean any areas of surface or ground water of such a nature that if altered by dredging, filling, or relocating, would result in damage or destruction to habitats and reproduction areas for plants, fish and wildlife of importance, and if altered by dredging, filling, or relocating, would result in eliminating, depreciating or obstructing the commerce, recreation and aesthetic enjoyment of the public, and would be detrimental to adequate ground water levels, and would adversely affect stream channels and their ability to handle runoff of waters, and would disturb and reduce the natural ability of wetlands to absorb flood waters and silt. (3-14-78) 3-11-86

For the purpose of this section, such Watershed Protection District shall include, but not be limited to, all lands within one hundred (100) feet of bodies of water, perennial streams, or intermittent streams.

Intermittent stream is one that flows within well defined stream beds during wet periods.

2. Regulations: No septic system and no building shall be constructed within the Watershed Protection District. 3-8-77

A. Permitted Uses

Any of the following uses, which may require a permit, and that do not result in the deterioration of the water quality or cause erosion in the Watershed Protection District shall be permitted:

1. Miscellaneous trimming, pruning, and thinning according to good forestry practices.
2. Tree farming, timbering and forestry according to practices approved by the County Forester.
3. Wildlife refuge
4. Wharfs, boat houses, footbridges or similar structures normally associated with use in or near water. (3-2-76) 3-12-91

5. Non-commercial sports and recreation uses, subject to obtaining Planning Board site approval, which shall provide at minimum for applicable:

- i) setbacks,
 - ii) buffers,
 - iii) sanitary facilities,
 - iv) parking,
 - v) mitigation of traffic impact, and
 - vi) adequate provision of emergency services,
- and subject to determination by the Planning Board of the following:
- vii) Such use shall not be the primary use of the lot;
 - viii) Such use shall be non-commercial in nature;
 - ix) Deleted (3.6.04);
 - x) Deleted (3.6.04);
 - xi) Such use shall be compatible with existing neighborhood uses;
 - xii) Such use complies with the spirit and letter of Section 3-1.

Nuisance Provision.

- xiii) No permanent buildings shall be permitted as part of such use, except for sheds to the extent necessary for storage of equipment for such use; and
- xiv) The Conservation Commission has determined, and the Planning Board agrees, that such use shall not: a) contribute to pollution of surface or ground water; b) damage or destroy habitats or reproductive areas for plants, fish, and wildlife of importance; c) eliminate, depreciate, or obstruct the commerce, recreation or aesthetic enjoyment of the public; d) be detrimental to adequate ground water levels; e) adversely affect stream channels and their ability to handle runoff of water; or f) disturb or reduce the natural ability of wetlands to absorb floodwaters and salt.

Uses involving motor-driven objects producing 60 or more decibels of sound at a range of ten feet as part of the sport or recreation are prohibited. Night lighting primarily for uses permitted under this section may be allowed by the Planning Board when more than 500 feet from any abutting lot line, but not between 9:00 p.m. and 7:30 a.m.

Section 4-13 Aquifer Conservation District 3-13-84

PURPOSE Pursuant to RSA 31:60 (674:16) and RSA 31:61A (674:21) and in order to help maintain the quality of living in the Town of Amherst as set forth in the Master Plan, the Town believes that an adequate water supply is indispensable to the health, welfare, and safety of its citizens. Such an adequate supply is also essential to the maintenance of the ecological balance of the natural environment of the Town, an environment which the Town wishes to protect. These water resources are subject to an ever increasing demand for new and competing uses. Thus, the Town declares and

determines that such water resources whether occurring above or below ground constitute a precious, finite, and invaluable public resource. These resources should be protected, conserved, and managed in the interest of present and future generations. The intent of this ordinance is to provide for the protection of the water resources from contamination by polluting, hazardous, or toxic materials.

LOCATION The Aquifer Conservation District is identified as those areas designated by blue shading or crosshatching which appear on statewide mapping prepared by the U.S. Geological Survey entitled "Availability of Ground water in the Lower Merrimack River Basin, Southern New Hampshire" by John E. Cotton 1977, and as may be amended or superseded by the U.S.G.S. or by the Planning Board as provided herein from time to time. This map is on display in the Zoning Office of the Town of Amherst. The District shall include mapped primary and secondary recharge areas.

A. Permitted Uses

Any of the following uses, which may require a permit, that meet the purpose of the District outlined above which comply with all of the following requirements and conditions:

1. Industrial or commercial uses, in the Industrial and Commercial zones respectively, which discharge no hazardous, or toxic waste on site and which uses are non-polluting.
2. Residential uses.
3. Activities designed for conservation of soil, water, plants and wildlife.
4. Outdoor recreation activities except those which destroy the surfaces of hillsides, and other watershed areas.
5. Operation and maintenance of existing bodies of water, wells, dams or other conservation devices.
6. Forestry uses provided that the land is returned to its natural state in order to prevent loss of top soil, erosion, or alteration of the normal drainage patterns and flow. Agricultural uses where the land in question is planted with a cover crop when the use is terminated.
7. Amateur non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than 500 feet from any residential use but not after 9:00 p.m. 3-12-91

B. Prohibited Uses

The following uses are prohibited in this District:

1. Outdoor storage of road salt or other deicing chemicals and dumping of snow containing road salt or other deicing chemicals.
2. Solid Waste disposal sites.
3. Seepage disposal sites and lagoons.
4. Automotive repair shops, junkyards, automotive junkyards, and automotive salvage operations, as well as any similar use which might potentially affect water quality.
5. On-site storage of hazardous waste, or toxic materials, except temporarily as necessary in the ordinary course of business. A permit is required for such temporary storage.
6. Residential underground hazardous fuel storage tanks (3-14-89)
7. Filling Stations/Gas Stations 3-11-93

C. Special Conditions

The following conditions shall apply to all uses in this District:

1. Sanitary waste water discharge to septic and leaching systems shall conform to the regulations set forth in the Town of Amherst Water Pollution Control Regulations.
2. All liquid or solid waste other than normal septic effluent shall be temporarily stored on-site and disposed of in a manner determined by the Planning Board.
3. Monitoring wells shall be established for all industrial and commercial uses utilizing or storing hazardous or toxic materials. The number, construction, and location of these wells shall be determined by the Planning Board. These wells shall be checked for compliance with the Interim Primary Drinking Water Regulations and Secondary Drinking Water Regulations as provided for in the Safe Drinking Water Act of 1974. The checking of wells shall take place on a monthly basis and the results reported to the Board of Health.
4. Non-residential storage of petroleum products shall be above ground in a manner approved by the Fire Department unless Planning Board permission is obtained for subsurface storage. It shall be the responsibility of every applicant for such permit to demonstrate to the satisfaction of the Planning Board that subsurface storage can be accomplished in a manner which will not adversely affect the aquifer. Subsurface storage of such materials is permitted only with permission of the Planning Board and with such conditions specified to prevent the pollution of the aquifer. Permits issued by the Board of Selectmen shall be for a period of not more than fifteen (15) years, renewable upon application.

5. Use of pesticides, herbicides, fertilizers, manure and other potentially dangerous leachables shall be controlled in a manner determined by the Board of Health and in compliance with RSA 149D, 149D:7, 222 and the NH Code of Administrative Rules. Storage of these materials shall not be outdoors.
6. When an industrial or commercial use changes on a site within this district to a use which involves the use, storage, or disposal of hazardous or toxic materials, a non-residential site review shall be required.
7. No more than 70% of a lot should be rendered impervious.
8. Storm water drainage from Aquifer sites shall be collected into catch or settling basins before leaving the site.

D. Incorrectly Designated Zones

When the actual boundary of the Aquifer Conservation District is disputed, the Planning Board, at the complainant's expense and authorization, may engage a professional geologist or hydro geologist to determine the precise location of the Aquifer Conservation District boundaries in the properties affected. A report of his/her findings shall be submitted to the Planning Board and shall include but not be limited to the following:

1. A revised soils map of the area in question prepared by a soils scientist qualified in hydrologic studies along with a written report of his/her on-site field inspection and test boring data.
2. The Planning Board shall adjust the boundary of this district based on the evidence provided as set forth above. It shall reserve the right to withhold action on any plat pending the results of an on-site inspection by the Board or its appointed agent and shall act to approve or disapprove the plan within ninety (90) days of submission or such further time as deemed necessary, but not to exceed an additional ninety (90) days.

E. Administration

All existing industrial and commercial uses utilizing or storing hazardous or toxic materials which are located within the Aquifer Conservation District must be reviewed by the Planning Board within six (6) months of the enactment of this Ordinance and must be in compliance with the conditions of this ordinance by January 1, 1986.

F. Non-Conforming Uses

Non-conforming uses which exist at the time of adoption of this ordinance may continue unless that use is found by the Board of Selectmen in consultation with the Planning Board to be an imminent danger to the public health, safety, and welfare. In such cases, that use must be brought into conformance with this Ordinance in a timely fashion as determined by the Board of Selectmen or the Board of Health. 3-13-84

Section 4-14 General Office Zone (GO) 3-12-85

A. Permitted Uses

1. Professional offices 3-12-85
2. General offices of individuals or groups for the handling of administrative functions such as but not specifically limited to: executive offices, business offices handling sales or services off the premises, including salesmen, agents or representatives of manufacturing, distributing, insurance and wholesale companies. 3-12-85. Specifically excluded is the retail sale of any product from the premises. 3-12-85
3. Mixed use development, limited to office and residential uses. (See Article IX Definitions) (3-14-89) 3-13-90
4. Amateur non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking and traffic impact. Uses involving motorized recreation vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than 500 feet from any residential use but not after 9:00 p.m. 3-12-91
5. Outside storage of materials and/or equipment, other than vehicles, shall be prohibited.

B. Area and Frontage Requirements

1. The minimum lot area shall be (1) acre except for a residential use which shall be two (2) acres. 3-12-85
2. Each lot shall have a minimum frontage of two hundred (200) feet on the principle route of access to the lot. 3-12-85

C. Yard and Building Requirements 3-12-91

1. Each new structure shall be set back either fifty (50) or one hundred (100) feet from the edge of the public road right-of-way.

The fifty (50) foot option requires that a natural vegetation or landscaped area only shall exist between the structure and the highway, excepting driveways and permitted signs.

(50) The hundred (100) foot option allows parking areas to the front of the structure, which parking areas shall be setback a minimum of fifty feet from the edge of the highway right-of-way.

Any permitted enlargement of pre-existing structures shall be beyond the fifty (50) foot setback line.

On corner lots, parking areas shall be screened from the highway with fences, landscaping and natural vegetation.

2. Each new structure or addition to a structure shall be set back thirty (30) feet from side and rear lot lines.

3. Any lot bordering a residential zone or an existing residential use shall have a landscape buffer between any buildings and such residential zone or use.

4. No structure shall be constructed to a height greater than thirty-five feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation.

5. The floor area ratio shall be a maximum of twenty percent (20%).

6. A minimum of thirty percent (30%) of the area of any lot shall remain landscaped open space and not be utilized for construction (including parking).

7. There shall be no more than one access to any lot wherever desirable for traffic safety and consideration shall be given to combining access points where two or more lots are being concurrently developed.

8. All storage and/or equipment parking areas shall be fenced, screened, or otherwise protected from view. 3-12-91

D. Architectural Design

1. As a condition of final approval, the applicant must obtain the Planning Board's approval of the exterior architectural design to ensure that it is in harmony with the neighborhood and the surrounding environment. 3-12-85

E. Prohibited Uses

1. Aircraft landing fields. (3-10-98)

Section 4-15 Historic District (HD)

(Adopted 3-11-86; re-drafted 3-13-01)

Section I Historic Preservation

1.1 Purpose. The purpose of this ordinance is to promote the educational, cultural, economic and general welfare of the public for the protection, enhancement, perpetuation and preservation of the Historic District. It is hereby declared that it is a public purpose that the heritage of Amherst will be safeguarded by:

- A. Preserving districts in Amherst which reflect elements of the cultural, social, economic, political and architectural history;
- B. Conserving property values in such districts;
- C. Fostering civic beauty;
- D. Strengthening the local economy;
- E. Promoting the use of an historic district for the education, pleasure, and welfare of the citizens of Amherst.

1.2 Definitions. (3-13-01) Unless specifically defined below, words or phrases in this ordinance shall be interpreted to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

- a. **Abutter.** Any person whose property is located in the Amherst Village Historic District and adjoins or is directly across the street or stream from the land under consideration by the Commission. For purposes of receiving testimony only and not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his property will be directly effected by the proposal under consideration.
- b. **Alteration.** Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction, or removal of any structure.
- c. **Alternate Member.** A member of the Commission who, at the direction of the chairperson, serves in the absence or disqualification of a regular member of the Commission.
- d. **Appearance.** The architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color, and texture of the building material and the type, design, and character of all windows, doors, light fixtures, signs, and appurtenant elements.
- e. **Appurtenance.** Property that is situated on, but subordinate to, the structure or place, such as a hot tub, swimming pool, antennae, satellite dish, etc.

- f. **Building.** Any structure that has a roof and is intended to shelter people, animals or chattel.
- g. **Building Permit (or Permit).** A certificate issued by the Zoning Administrator permitting the building, alteration, installation, repair, or change of buildings, fences (within the Historic District), land, or uses as regulated by the Zoning Ordinance. (3-11-03)
- h. **Certificate of Approval (or Certificate).** A certificate issued by the Historic District Commission indicating its approval of an application to alter, repair, construct, add onto, move, demolish, or change the use of a structure or a site within an Historic District.
- i. **Change of Use.** A change in how a structure or place is utilized or developed, whether for industrial, commercial, residential or agricultural purposes.
- j. **Character.** The aggregate of visible historic and architectural features and traits that together form the individual nature of an historic district.
- k. **Commission.** Commission shall mean the Historic District Commission of the Town of Amherst, New Hampshire.
- l. **Construction.** The act of adding an addition to an existing structure or the erection of a new principal accessory or structure on a lot or property.
- m. **Demolition.** Any act or process that destroys in part or in whole a landmark or structure.
- n. **Designation.** Act of identifying historic structures and districts subject to regulation in historic preservation ordinances or other preservation laws.
- o. **Design Guidelines (or Guidelines).** Standards of appropriate design and activity developed by the Commission which offers property owners guidance in preserving the historic and architectural character of a structure, setting, or place, and which standards shall include the *Secretary of the Interior's Standards for Rehabilitation*. (See *Regulations*.)
- p. **Ex Officio Member.** Any member of the Commission who holds office by virtue of an official position and who shall exercise all the powers of a regular member of the Commission.
- q. **Elevation.** The orthographic projection of an object or structure on a vertical picture plane parallel to one of its sides, and usually drawn to scale.

- r. **Historic District.** An area designated by ordinance of the Town of Amherst and which contains within definable geographic boundaries a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development.
- s. **Historic Property (or Historic Resource).** Any prehistoric or historic site, place, building, structure, or object that is deemed by the Commission to have historic, cultural, social, economic, political, or architectural significance.
- t. **Maintenance.** Ordinary maintenance and repair of any architectural feature that does not involve removal or a change in design, dimensions, materials or outer appearance of such feature.
- u. **Moving.** Any relocation or removal of a structure on its site or to another site.
- v. **National Register of Historic Places (or National Register).** Official inventory of "districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering and culture."
- w. **Orthographic Projection.** A method of projection in which a three-dimensional object is represented by projecting lines perpendicular to a picture plane.
- x. **Place.** An open space of land within the historic district.
- y. **Preservation.** The act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic structure, place, or feature.
- z. **Reconstruction.** The act or process of reproducing by new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purposes of replicating its appearance at a specific period of time and in its historic location.
- aa. **Regular Member.** A member of the Commission who has full voting power.
- bb. **Regulations.** Local design guidelines and standards of review promulgated by the Commission that interpret and implement statutory requirements and are in conformance with the Historic District Zoning Overlay.
- cc. **Rehabilitation.** The process of returning property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the

property which are significant to its historic, architectural, and cultural values.

- dd.* **Repair.** Any change that is not construction, addition, demolition, moving, or alteration.
- ee.* **Restoration.** The act or process of accurately recovering the form, features, and character of a property and its setting as it appeared at a particular period of time by means of removal of features from other periods in its history and reconstruction of missing features from the restoration period.
- ff.* **Rules of Procedure.** A set of rules adopted by the Commission pursuant to RSA 676 concerning the method of conducting the Commission's business.
- gg.* **Scale.** A certain proportionate size, extent, or degree, usually judged in relation to some standard or point of reference.
- hh.* **Street.** Relates to and includes street, avenue, boulevard, road, lane, alley, viaduct, highway, freeway and other ways.
- ii.* **Structure.** Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to: buildings, fences, stone walls, gazebos, signs, backstops for tennis courts and ballparks, antennae, above ground pools and hot tubs, air conditioning units, propane tanks, playground equipment, etc.
- jj.* **Texture.** The visual and tactile quality of a surface, apart from its color or form.
- kk.* **Zoning Ordinance.** The laws of the Town of Amherst regulating the building, alteration, installation, repair, or change of buildings, land, or uses within the borders of the entire town.

Section II Historic District

2.1 Amherst Village Historic District. Pursuant to RSA Chapter 674:46, there is hereby established an historic district known as the Amherst Village Historic District, the boundaries of which are delineated on the Zoning Map on file with the Zoning Administrator.

2.2 Historic Significance. The Amherst Village Historic District is hereby recognized as an area of unique character, and architectural nature which can contribute significantly to the attractiveness and vitality of Amherst. It is further recognized that the character and nature of the area depends on the unity of design of the complex in which each building contributes creating a value greater than the sum of the individual contributions. The character and value of the area as the county seat and center of government of Hillsborough County from 1771 to 1879, the continuity of rich architectural expression,

quality and integrity in closely related styles, materials, scale and detail in individual buildings and throughout the area and the opportunities that the area offers to maintain its historical heritage. The opportunities that the area offers are recognized as including retention of the architectural and historic values of the area. This ordinance is intended to provide for regulations of activities that would alter the exterior appearance of existing and proposed structures and for activities that would alter the use and appearance of the exterior spaces adjoining these buildings.

2.3 Criteria for designation of local historic districts. Criteria for the designation of local historic districts shall be the same as the National Register criteria as set forth in 36 CFR 60 ["Code of Federal Regulations," Chapter 36, Part 60 published in the *Federal Register*]. 3-13-01

2.4 Procedures for designation of local historic districts. An historic district shall be considered to be superimposed over the existing zoning districts and the rules and regulations applicable to an historic district shall be in addition to those applicable to the zoning districts which have been established for the area and as they may from time to time be amended. Procedures for the designation of local historic districts shall be in conformance with RSA 674:46 and other applicable statutory requirements.

Section III Historic District Commission

In order to carry out the purpose of this ordinance, a Historic District Commission known as the Amherst Historic District Commission is hereby established pursuant to RSA Chapter 673 which Historic District Commission is the successor to, and a continuation of the Historic District Commission established at the Annual Meeting in March 1970.

3.1 Membership.

a. The Commission shall consist of not fewer than five nor more than seven regular members, one of whom shall be an *ex officio* member of the Board of Selectmen and one of whom may be an *ex officio* member of the Planning Board. Not more than five alternate members may be appointed. *Ex officio* members from the Planning Board and the Board of Selectmen shall be appointed by their respective boards. All other regular and alternate members shall be appointed by the Board of Selectmen. 3-13-01

b. The qualifications and terms of Commission members, the organization, election and terms of its officers, and the scheduling of meetings shall be in accordance with the provisions of RSA Chapter 673 and any rules of procedure of the Commission not inconsistent with the State enabling statutes. At a minimum, in determining each member's qualifications, the Board of Selectmen shall take into consideration the appointee's demonstrated interest and ability to understand, appreciate and promote the purposes of the Commission. 3-13-01

3.2 Powers and Duties.

a. The Commission shall have all the powers and duties vested in the Historic District Commissions under RSA Chapter 674 and 675.

b. The Commission shall adopt rules of procedure (to prescribe the method of conducting its business) and regulations (to provide design guidelines and standards of review) consistent with this ordinance and RSA Chapters 673, 674 and 676.

c. The Commission shall seek advice from such professional, educational, cultural, and other groups of persons that may be deemed necessary in the determination of a reasonable decision. The Commission shall have the power to engage such technical assistance and consultants as may be deemed necessary to carry out the purposes of this ordinance.

d. The Commission shall have the power to accept and use gifts, grants and contributions in the exercise of its function.

e. The Commission may conduct surveys of the buildings for the purposes of determining those of historic and/or architectural significance and pertinent facts about them, formulate recommendations concerning the preparation of maps, brochures and historic markers for selected historic and/or architectural sites and buildings, cooperate with and advise the governing body, the Planning Board and other municipal agencies involving historic and/or architectural sites and buildings; advise owners of the buildings of the problems of preservation and restoration.

SECTION IV Certificate of Approval required

4.1 Certificates of Approval.

Except as provided herein, it shall be unlawful for any owner or person (including without limitation any municipal or governmental entity) to alter, construct, repair, move, demolish, or change the use of any structure or place located within the Historic District without applying for and receiving from the Commission a Certificate of Approval for such activity. Activities which require Certificates of Approval are intended to include, but not limited to, such activities as changing the architectural detail of exterior walls, replacement or modification of windows, ~~or~~ doors or siding, installation or removal of porches or fire escapes, roofing or chimney modification and installation of antennae or other appurtenances on or near the building exterior or similar activities for which a building or zoning permit are also intended to include, but not be limited to, such activities with regard to the balance of the site as regrading, paving, repaving, removal of mature trees, installation or removal of fences, retaining walls, signage, on-site lighting, commercial style trash receptacles, telecommunication towers, and similar activities but are not intended to include or prevent ordinary maintenance, repair or grounds keeping activities.

4.2 Certificate of Approval Application Procedure.

For purposes of Administration, the Certificate of Approval application procedure involving a structure or place in an Historic District may be combined with building permits which may be required under the Zoning Ordinance and/or Building Code. Materials required as part of a Certificate of Approval application include materials necessary for such building permits as may be required under the Zoning Ordinance and/or Building Code, plus such renderings, elevations,

photographs or other materials as the Historic District Commission may specify to the Zoning Administrator as being necessary for their review and consideration.

4.3 Review by Historic District Commission

Prior to the issuance of a building permit for any exterior work or changes of use with respect to any property situated in an Historic District, the owner shall submit a Certificate of Approval application to the Historic District Commission for consideration. The Zoning Administrator may issue the building permit only following approval of that application by the Historic District Commission or as provided in RSA Chapter 676:8 and 676:9. In any case in which the Zoning Administrator is unclear as to the applicability of this ordinance to a particular case, he or she may consult with the Commission for an interpretation of the requirements of the Commission. Although the provisions of this section are not intended to impede the Zoning Administrator in ordering the correction of unsafe conditions of an emergency nature, he or she shall make every effort to coordinate his or her actions with the interests of the Commission by advising it of any such orders or actions and by involving the Commission in the review of building permits for corrective measures to the extent feasible and practical.

4.4 Personal Wireless Service Facilities.

Applications to erect personal wireless service facilities in an historic district shall be reviewed by the Commission pursuant to its own design guidelines and standards of review as well as to Article III, Section 3-16, Paragraph 7.5 of the Zoning Ordinance ("Personal Wireless Service Facilities: Historic Buildings and Districts"). 3-13-01

SECTION V Interpretation

Nothing in this ordinance shall be construed to prevent ordinary maintenance or repair of any structure or place within any Historic District nor to prevent the construction, alteration, repair, moving or demolition of any structure under a building permit issued by the Zoning Administrator, or any duly delegated authority, prior to the establishment of such district.

SECTION VI Matters to be considered in Passing Upon Appropriateness of Erection, Reconstruction or Restoration of Structures

The Historic District Commission or Board of Adjustment, on appeal, shall only consider exterior arrangement or features. The Historic District Commission or Board of Adjustment, on appeal, shall consider the following criteria in passing upon an application for a Certificate of Approval. For purposes of this section, *The Secretary of the Interior's Standards for Rehabilitation* are incorporated herein. 3-13-01

6.1 The special character of the area.

6.2 The historical and/or architectural value of the building/s, structure/s and its setting, and also as it relates to its setting and to the welfare of the community.

6.3 The compatibility of exterior design, arrangement, texture and materials proposed to be used in relationship to the existing building or structure and its setting or if new construction, to the surrounding area.

6.4 The general size and scale of new construction in relation to the existing surroundings including consideration of such factors as the building's overall height, width, street front, number of stories, type of roofs, facade, openings (windows and doors), and architectural details.

6.5 The economic activity of the building and the needs of that activity as it relates to the welfare of the community.

6.6 EXCEPTIONS: The Zoning Administrator is not required to forward the following applications to the Historic District Commission for their review, provided the proposed project complies with the stipulations specified:

- a. Ordinary maintenance and repair of any exterior architectural feature which does not involve a change in design, material, or outer appearance thereof; including but not limited to maintenance and repair of firewalls, roofs, chimneys and temporary removal of shutters.
- b. Storm doors and storm windows providing that the original architectural features are not removed or destroyed.
- c. Painting or repainting of a building/s or structure/s in any color.

Section VII Enforcement

This ordinance shall be enforced in accordance with the provisions of Article VI of the Zoning Ordinance, and violators shall be subject to the penalty provisions contained therein.

Section VIII Remedies

In the case of any violation of this ordinance, or regulations adopted hereunder, the Commission, in addition to other remedies may institute any appropriate action or proceedings to prevent, restrain, correct or abate such violation.

Section IX Appeal

Any person aggrieved by a decision of the Historic District Commission shall have the right to appeal concerning such decision to the Zoning Board of Adjustment. Upon appeal, the Zoning Board of Adjustment shall review the decision of the Historic District Commission to determine whether the decision conforms to the provisions under this ordinance and the rules of procedure and regulations adopted thereunder. 3-13-01

Section X Validity

If any section, subsection, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section XI Effective Date

This ordinance shall take effect upon adoption. 3-11-86

Section 4-16 Planned Office Development (POD) 3-10-87 DELETED /310/98

Section 4-17 Northern Transitional Zone (NTZ) 3-8-88

General The purpose of establishing the Northern Transitional Zone is as follows:

1. To recognize, establish, and affirm an area of the Town in which lower density development is of itself, desirable.
2. To recognize the unique scenic and natural character of a portion of Town which forms a natural entry to the Northern Rural Zone.
3. To ensure that future development in this area of Town be of a type that is compatible with the area's scenic and natural character.
4. That the Northern Transitional Zone shall be bounded by Horace Greeley Road on the North, NH Route 101 on the South, and Amherst Town line on the East. The Westerly boundary is the intersection of Horace Greeley Road and NH Route 101.

A. Permitted Uses

1. One-family dwelling and accessory buildings. 3-8-88
2. Farm, agricultural, or nursery use. 3-3-88
3. Roadside stand for the sale of farm products or nursery products. 4.
- Home occupation. 3-8-88
5. Planned Residential Development - PRD - In order to achieve the purpose of this section, Planned Residential Development shall be encouraged as the principle method of future development of this zone. 3-8-88
6. Open Space Plan (See Article IX Definitions) 3-14-89
7. Amateur non-profit sports and recreation uses subject to obtaining Planning Board site approval which may provide at minimum for setbacks, buffers, sanitary facilities, parking and traffic impact. Uses involving motorized recreation

vehicles are prohibited. Night lighting may be allowed by the Planning Board when more than 500 feet from any residential use but not after 9:00 p.m. 3-12-91

8. All family day care home facilities are subject to compliance with all current licensing procedures and all applicable health/safety Ordinances for the State of New Hampshire and the Town of Amherst. Family day care facilities are regulated by RSA 170-E:1, 170-E:2, 204-C:72, 161-G:4 and all other applicable State Laws. (3-12-91) 3-10-92

9. Other development-all development in this zone other than Planned Residential Development shall adhere to the following:

B. Area and Frontage Requirements

1. The minimum lot area for any permitted use shall be 3.5 acres. The minimum area shall contain no wetland as defined in Art. IV, Sec. 4-11, no flood plain as defined in Art. IV, Sec. 4-10), and no slopes greater than 20 %. (3.6.04)

2. Each lot shall have a minimum frontage of three hundred (300) feet on the principle route of access to the lot.

3. If frontage is provided by a Class A or Class B reduced frontage, thirty-five (35) feet of frontage on a publicly maintained road shall be sufficient for the lot or lots.

C. Yard Requirements

1. Each structure shall be set back at least fifty (50) feet from the front lot line, or at such a distance as shall conform to the line of existing buildings on that lot.

2. Each structure shall be set back at least forty (40) feet from the side and rear lot lines. In the case of corner property, this distance shall be increased to fifty (50) feet on that side bordering a street, lane, or public way. (3.8.05)

3. Any accessory structure shall be set back at least thirty (30) feet from the side and rear lot lines and at least fifty (50) feet from the front lot line and shall not exceed twenty-two feet in height. This requirement may be waived for farm structures. 3-8-88

4. No new principal structure shall be constructed to a height greater than thirty-five (35) feet exclusive of chimneys or cupolas, measured from the lowest average adjacent exterior elevation. No new structure shall have a floor area ratio greater than 15%. (3.6.04)

D. Prohibited Uses

1. Aircraft landing fields. (3-10-98)

ARTICLE V

SPECIAL EXCEPTIONS

Section 5-1 General

Special exceptions as herein provided for shall be deemed to be permitted uses in their respective zones, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements and standards of this Ordinance. All such cases are hereby declared to possess characteristics of such unique and special form that each specific use shall be considered as an individual case. 3-12-63

Section 5-2 Standards Applicable to All Special Exceptions

A. Conditions for Special Exceptions

Before the Board of Adjustment considers the approval of an application for a special exception, the applicant shall prove to the satisfaction of the Board of Adjustment that all the following conditions have been met:

1. That the property in question is in conformance with the dimensional requirements of the zone and that the use is compatible with the Amherst Master Plan.
2. That there is safe vehicular and pedestrian access to and from the site.
3. That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety and general welfare of the neighborhood and of the Town of Amherst.
4. That the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or inappropriate lighting than the existing use of the property.
5. That the applicant describe in writing and on a scaled drawing, the location and size of the use, the nature and intensity of operations involved, the tract size, parking areas and other physical land features of the site in question.

6. That the proposed use will not adversely affect the ground water resources of Amherst, in particular the Aquifer Conservation District as defined in Section 4-13 of the Amherst Zoning Ordinance.

Response to each of the above conditions shall be provided in writing on forms available in the Amherst Zoning/Planning Office.

The Board of Adjustment may seek additional recommendations of the Amherst Planning Board. The applicant shall file a Non-Residential Site Plan Review application in accordance with Section "C" of the Amherst Zoning Ordinance with the Amherst Planning Board. 3-10-92

B. Conditions of Approval

The Board of Adjustment may attach such conditions to its approval as are reasonable, necessary and appropriate. All special exceptions users are hereby declared to have special characteristics that shall be considered on a case- by-case basis. To ensure compliance with the spirit of the Zoning Ordinance, such conditions shall not conflict with the review and approval of the Planning Board. 3-10-92

C. Limits on a Special Exception

Substantial construction, or occupancy if no construction is involved, must commence within one (1) year of the Board of Adjustment approval of the special exception. If construction or occupancy is not commenced within this period, the special exception approval is declared null and void. 3-10-92

Section 5-3 Permits for Special Exceptions

A permit for a special exception use shall not be issued by the Board of Selectmen or their duly appointed representative, the Administrative Official, until so directed by the Board of Adjustment who shall first be satisfied that all of the standards and conditions of this article and the Ordinance have been met. 3-12-63

Section 5-4 Uses permitted by Special Exception Residential/Rural

3-11-93

1. Religious purposes 3-12-63
2. Nursing Homes 3-12-63

3. Elderly Housing: Single or Multi unit residential developments which comply with the Federal Definition of Elderly Housing subject to the following: (3-14-89) (3-12-91) (3-11-03)

- a. Each structure may be a single dwelling unit or a cluster of units containing from two (2) to twelve (12) dwelling units. 3-14-76 (3-11-03)
- b. Tract density shall be a minimum of one-half acre for each dwelling unit, and the entire tract of land on which a development is situated shall contain not less than fifteen (15) acres. 3-4-75
- c. If off-site drinking water is available and on-site soils are classified by the NHDES as Group I or II then the tract density in units shall be limited to a maximum of six (6) bedrooms per acre and the minimum tract size shall be reduced to seven and one-half (7.5) acres. (3-13-01) (3-11-03)
- d. Ancillary facilities such as community meeting rooms, site management offices, and rooms for limited healthcare services are allowed. (3-13-01) (3-11-03)
- e. No structure shall be constructed to a height greater than thirty-five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation. (3-4-75) 3-11-86 (3-11-03)

4. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) 3-11-03

Section 5-5 Uses permitted by Special Exception Rural Zone **(eliminated 3-11-93)**

Section 5-6 Uses permitted by Special Exception Commercial Zone

- 1. Outside recreation establishments exclusive of outdoor theaters. 3-2-76
- 2. Outside storage of equipment and materials, but not including junk yards. 3-2-76
- 3. Religious Uses 3-2-76
- 4. Private Schools 3-2-76
- 5. Hospitals, nursing homes and other similar uses 3-2-76
- 6. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between

it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) (3-11-03)

7. Kennels 11-2-82

Section 5-7 Uses Permitted by Special Exception Northern Rural Zone

1. Religious purposes 3-2-76

2. Private schools 3-2-76

3. Hospitals, clinics, nursing homes, and other similar uses 3-2-76

4. Professional Offices 3-2-76

5. Funeral Homes 3-2-76

6. Sawmills (3-2-76) 3-9-82

7. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) (3-11-03)

8. Kennels 11-2-82

Section 5-8 Uses Permitted by Special Exception Industrial Zone

1. Kennels. 11-2-82

2. Sexual Oriented Businesses (3-14-00)

I. Purpose and Intent

It is the purpose of this article to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Amherst and, it is the intent to promote the health, safety, and general welfare of the Citizens of the Town of Amherst and, it is the intent of this article that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually orientated businesses; and, the provisions of this Article have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene

material. The nature of the proposed use shall not be sufficient grounds to support a finding that the use does not meet the criteria set forth in Section 5-2.

II. Definitions of Sexually Oriented Businesses

A sexually orientated business is any place of business at which any of the following activities is conducted:

A. Adult Bookstore or Adult Video Store — a commercial establishment that devotes more than 15% of the total display, shelf, rack, wall, table, stand or floor area, utilized for the display and sale of the following; The establishment, as one of its principal business purposes, offers for sale or rental any form of consideration, any one or more of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which depict or describe “specified sexual activities” or “specified anatomical areas” or meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1; or,
2. Instruments, devices or paraphernalia which are designed for use in connection with “sexual conduct” as defined in RSA 571-6:1, other than birth control devices. A commercial establishment may have other principal business purposes that do not involve the offerings for sale or rental of material depicting or describing “specified sexual conduct or activities” and still be categorized as “Adult Video/Book Store.” Such other business purposes will not serve to exempt such commercial establishments from being categorized as an “Adult Video/Book Store” so long as one of its principal business purposes is offering for sale or rental for consideration to specified material which depict or describe “specified sexual conduct or activities” or specified anatomical areas.”

a) Specified sexual conduct or activities — means the male genitals in a state of sexual arousal and/or vulva or more intimate parts of the female genitals.

b) Specified anatomical areas — means and includes any of the following:

- 1) The fondling or other erotic touching of the human genitals, pubic region, buttocks, anus, or female breasts;
- 2) Sex acts, normal or perverted, actual or simulated, including intercourse, or copulation, or sodomy;
- 3) Masturbation, actual or simulated; or
- 4) Excretory function as part of or in connection with any of the activities set forth in (1) through (3) above.

AN ADULT BOOKSTORE OR ADULT VIDEO STORE DOES NOT INCLUDE AN ESTABLISHMENT THAT SELLS BOOKS OR PERIODICALS AS AN INCIDENTAL OR ACCESSORY PART OF ITS PRINCIPAL STOCK AND TRADE AND DOES NOT DEVOTE MORE THAN 15% OF THE TOTAL DISPLAY AREA OF THE ESTABLISHMENT TO THE SALE OF BOOKS AND PERIODICALS.

B. Adult Motion Picture Theatre — An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets

the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B: 1, for observation by patrons. For subsections C, D, E, F, G, a “substantial portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven (7) days within any 56 consecutive day period.

C. Adult Motion Picture Arcade — Any place to which the Public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct,” as set forth in RSA 571-6:1.

D. Adult Drive-In Theatre — An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

E. Adult Cabaret — A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B: 1, and /or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

F. Adult Motel — A motel or similar establishment offering public accommodations of any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

G. Adult Theatre — A theatre, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B: 1.

H. Nude Model Studio — A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of

consideration or such display is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct,” as set forth in RSA 571 -B:1.

I. Sexual Encounter Center — A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in (a) or (b) is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct,” as set forth in RSA 571-B:1.

III. Allowed Locations and Location Restrictions of Sexually Oriented Businesses

Sexually oriented businesses, as defined above, shall be permitted only in the Industrial Zone, by Special Exception, provided that all other regulations, requirements, and restrictions for the zone in which the sexually oriented Business is to be located are met; and no sexually oriented business shall be permitted within 1,000 feet of another existing sexually oriented business or one r which a building permit has been applied for; and,

No sexually oriented business shall be permitted within 750 feet of any other zoning boundary.

No sexually oriented business shall be permitted within 750 feet of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten, State approved day care center or public sports/recreation parks; and no sexually oriented business shall be permitted within 750 feet of the Town boundaries; and,

No sexually oriented business shall be permitted within 1,000 feet of another existing sexually oriented business on the date of the passage of this article and, no sexually oriented business shall be permitted within a building, premise, structure or other facility that contains a sexually oriented business as defined in paragraphs A through I above.

The Zoning Board of Adjustment shall grant the Special Exception provided the applicant demonstrates facts sufficient to support a finding that the conditions for the granting of a Special Exception in section 5-2A have been met.

IV. Measure of Distance

The distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall or temporary or permanent physical divider between each of the businesses.

V. Additional Reasonable Regulations

The Planning Board is empowered hereunder to review and approve permit applications for sexually oriented businesses and impose reasonable restrictions for buffering, outdoor parking lighting, adequate ingress and egress from the site off of and onto public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetic in the “Non-Residential Site Plan Review Regulations of the Town of Amherst, New Hampshire,” and to avoid site development layout which may result in negative environmental impacts.

VI. Severability

The invalidity of any section or provision of this Article shall not invalidate any other section or provision thereof.

Section 5-9 Uses Permitted by Special Exception Limited Commercial Zone

1. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) (3-11-03)

2. Religious purposes 3-8-88

3. Kennels (3-13-01)

Section 5-10 Uses Permitted by Special Exception Northern Transitional Zone

1. Religious purposes 3-14-89

2. Private Schools 3-14-89

3. Hospitals, Clinics, nursing homes, and other similar uses 3-14-89

4. Professional Offices 3-14-89

5. Funeral Homes 3-14-89

6. Sawmills 3-14-89

7. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) (3-11-03)

8. Kennels 3-14-89

NOTE:

Uses Permitted by Special Exception in the Flood Plain Conservation District was eliminated 11-2-82. See Section 4-10

Uses Permitted by Special Exception in the Wetland Conservation District was eliminated 3-12-85 See Section 4-11

Uses permitted by Special Exception in the Watershed Protection District was eliminated 3-12-85 See Section 4-12

ARTICLE VI

ADMINISTRATION

Section 6-1 Enforcement

This Ordinance shall be enforced by the Board of Selectmen and the Board of Selectmen is hereby given power and authority to enforce the provisions of this Ordinance. The Board of Selectmen is further empowered to confer upon an administrative official appointed by the Board of Selectmen, the duty of administering the provisions of this Ordinance. Upon any well founded information that this Ordinance is being violated, the Selectmen shall seek an injunction in Superior Court or shall take such other legal action as they deem appropriate. 3-12-63

Section 6-2 Building Permits, Certificates of Occupancy, Earth Removal Permits

A. Building Permits

1. No building or structure shall hereafter be erected or structurally altered until a building permit shall be issued by the Selectmen or their authorized agents, the Building Inspector or Zoning Administrator, stating that the building or structure, and use of land comply with the regulations of this Ordinance and all building and health laws and Ordinances. 3-14-78

2. No permits shall be issued to any lot upon which there is outstanding a recorded violation of the rules, regulations or Ordinances of the Town of Amherst, excepting any permit required to correct such violation.

3. A foundation plot plan shall be required prior to backfill of the foundation. Foundations shall include: poured concrete walls, concrete block or stone walls, poured concrete monolithic slabs, and pole barn piers or similar type permanent supports. This shall not apply to structures that are set on semi-permanent bases – such as concrete or stone pier blocks or pressure treated wood blocks. This foundation plan shall be done by a Licensed Land Surveyor and shall certify that the foundation meets all the setback regulations in the zone in which it is located. (3.9.99) (3.8.05)

B. Certificate of Occupancy

1. No building or structure hereafter erected or structurally altered shall be occupied or used until a certificate has been issued by the Selectmen, or their authorized agents, the Building Inspector or Zoning Administrator. The certificate

shall be issued only after the Building Inspector or Zoning Administrator makes a finding that the building or structure has been constructed, arranged, or structurally altered or is to be used in conformance with the provisions of this Ordinance and all other health, safety and building laws, including but not limited to a requirement that the site be serviced by all necessary utilities including municipal water (or that water certified as satisfactory is available if municipal water is not provided) and that construction be in accordance with all representations made as part of the application for and granting of the building permit. 3-14-78

2. Certificates of Occupancy for new structures shall not be issued unless two (2) copies of a plot plan (survey) are filed with the Building Official, prepared by a Licensed Land Surveyor certifying the following information:

- a. Boundary markers are found or set at least at the four principle corners of the lot, or at least three points or angles for lots so configured. pins are acceptable in bituminous concrete paving. If the lot is greater than ten (10) acres and no portion of the perimeter property line is closer than five (5) times the minimum zoning setback distance from the building/s on it, then the requirements to set markers noted above is waived, however all other provisions of this Ordinance shall be required.
- b. Location to scale on the lot of the building/s, well/s, septic system/s, driveway/s. The plot plan shall include dimensions, taken from two main corners of the structure, or other permanent location points, to the (2) cleanout on the septic tank, to the distribution box, and to the two closest corners of the leach field, 3-12-85
- c. A statement that the building/s conform to the setbacks of the District where located. 3-11-93

Scale of the plot plan to be 1"=100' if the entire lot will not fit on 17" x 22" paper. Boundary markers shall be of granite, concrete or drill holes in granite or durable ledge. Offset markers may be used where natural or historical obstruction occurs. 3-9-82

C. Uses and Certificate of Occupancy

No change shall be made in the use of a building or part thereof now or hereafter erected or structurally altered, or in the use of land now or hereafter occupied, nor shall any use of a building or land be undertaken, without a Certificate of Occupancy having first been issued by the Selectmen, or their authorized agents, the Building Inspector or Zoning Administrator. No such certificate shall be issued to make such change or undertake such use unless it is in conformity with the provisions of this Ordinance or amendments thereto hereafter duly enacted. 3-14-78

D. Earth Material Removal

No earth material as defined in Section 3-8 hereof shall be removed unless a permit has been applied for and obtained in a fashion consistent with the provisions of Section 3-8 hereof. 3-14-78

E. The Board of Selectmen,

or the Administrative Official, may require of any applicant for a permit such sketches, drawings, plot plans or other material as are deemed necessary to make a decision as to compliance with the provisions of this Ordinance. They may require plans, details, specifications for new structures to have been prepared, or sealed, by a licensed architect or engineer. (3-12-63) 3-13-84

F. If an applicants

requests a permit to undertake an activity on a lot not conforming in size and frontage as otherwise required by this Ordinance and is making application under Article IV, Section 4-2 of this Ordinance, such applicant shall file as part of his application, the date of the recording and the Registry of Deeds reference number of the recording of the non-conforming lot. 3-12-63

G. The Administrative Official

shall be a salaried employee of the Town and shall be paid a salary as determined by the Selectmen and approved by the Town as part of the annual budget. 3-6-73

H. All permits issued under

the provision of this Ordinance shall expire and become invalid two years from the date of issuance of the permit. 3-14-78

Effective this date, all residential site plans approved by the Planning Board shall expire four (4) years from the date of Planning Board approval. This expiration date shall not apply to plats that are exempt or vested because of the operation of RSA 674:39. 3-14-89

I.

1. Upon receipt of the application for a permit with sufficient information to clearly establish the nature and extent of the proposed activity the Administrative Official shall determine whether the proposed activity or use constitutes a permitted use within the provisions of this Ordinance or whether a special exception or a variance is required. 3-14-78

2. If the proposed use requires a special exception or a variance, the Administrative Official shall refer the application for permit to the Board of Adjustment for action. 3-14-78

3. If the proposed use or activity is within the provisions of this Ordinance, the Administrative Official shall post a notice in two public places in the Town of Amherst, one of which shall be at the Town Hall and no permit shall be issued until said notice has been posted for a period of seven (7) days. If during that

period the Administrative Official received objection to the issuance of the requested permit, he may issue the permit, refer the application to the Board of Adjustment for action, or deny the permit. 3-14-78

J. Consistent with State Statues,

Public utility structures proposed for the Town of Amherst shall obtain building permits and meet zoning requirements. 3-13-84

Section 6-3 Board of Adjustment

A. Establishment

In accordance with the provisions of the New Hampshire Revised Statutes Annotated 1955, Chapter 673 as amended and as hereinafter provided, a Board of Adjustment is established. 3-12-63

B. Organization

1. The Board of Adjustment shall consist of five members who shall not hold any other elective office or position under the municipality. 3-12-63
2. The members of the Board of Adjustment shall be elected at the annual Town Meeting. 3-5-74, 3-12-96
3. DELETED (3-10-98)
4. Vacancies in the Board, occurring other than through the expiration of a term, shall be filled in accordance with RSA 673:12.
5. DELETED (3.8.05)
6. Members of the Board of Adjustment shall serve without compensation. 3-12-63

C. Powers

The Board of Adjustment shall perform all the duties and have all the powers provided by the New Hampshire Revised Statutes Annotated 1955 as Amended and as hereinafter provided. 3-12-63

D. Meetings

Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. All meetings shall be open to the public. 3-12-63

The Board shall keep a record of proceedings showing the vote upon every question. 3-12-63

Every rule or regulation, and every order, requirement, decision or determination of the Board of Adjustment shall immediately be filed in the office of the Board of Adjustment and shall become a public record. 3-12-63

The concurring vote of three members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the administrative office, or to decide in favor of the appellant, or to decide any matter upon which it is required to pass, or to effect any variance from the strict application of provisions of this Ordinance. 3-12-63

All applications shall be acted upon within ninety days after the date of filing the application or within 90 days of the date of filing of any additional information requested by the Board but no later than 6 months after the date of filing; provided, however, when additional information is not furnished within a reasonable time, the Board may, on notice to the applicant, deny the application without prejudice to the right to refile. When an application is denied on the merits, the application may not be refiled for a period of one year after the date of denial. 3-6-73

E. Procedure on Permits for Special Exceptions, Variances and Appeals of Administrative Decisions

1. The Board of Adjustment shall not authorize the issuance of a permit until after a hearing on the application is held.

2. Upon receipt from the Administrative Official of an application for a special exception, variance, or appeal of an administrative decision, the Board of Adjustment shall hold a public hearing. 3-12-91

Notice thereof shall be given as follows:

a) The applicant and all of the abutters shall be notified of the hearing by certified mail, return receipt requested, stating the time and place of the hearing, and such notice shall be mailed not less than five days before the date fixed for the hearing of the appeal.

b) A public notice of the hearing shall be published in a newspaper of the general circulation in the area, not less than five (5) days before the date fixed for the hearing of the appeal.

- c) The public hearing shall be held within thirty (30) days of the receipt of the notice of the appeal.
- d) Any party may appear in person or by his agent or attorney at the hearing of an appeal.
- e) The cost of advertising and costs of mailing the notices of hearing shall be payable by the person making the appeal prior to the hearing.

3-9-82

F. Conditions for the Granting of a Variance 3-10-64

1. Every variance granted by the Board of Adjustment shall be based upon and accompanied by a specific finding or findings, supported by evidence produced at the hearing that:
 - a) There are several circumstances or conditions, fully described in the findings applying to the land or buildings that do not apply generally to land or buildings in the neighborhood. 3-12-63
 - b) Said circumstances or conditions are such that the strict application of the provisions of the Ordinance would deprive the applicant of the reasonable use of the land or building and would result in unnecessary hardship. 3-12-63
 - c) For reasons set forth in the findings granting of the variance would be of benefit to the public interest, would promote the reasonable use of the land or building and that the variance granted by the Board of Adjustment is the minimum variance that will accomplish this purpose. 3-12-63

G. Time Limits of Special Exceptions and Variances

If, after a permit has been authorized by the Board of Adjustment as a result of a request for a Special Exception or Variance, such permit has not been obtained within one year from the date of such authorization, then such authorization shall become null and void, and no permit shall be issued thereunder. (3-4-75) 3-9-82

H. Appeal from Order of the Board of Adjustment

Within thirty (30) days after any order or decision handed down by the Board of Adjustment, any party to the action or proceedings of the Board of Adjustment, or any person directly affected thereby, may move for a re-hearing and thereafter, if necessary,

appeal by petition to the Superior Court in accordance with the provisions of the laws of the State of New Hampshire and may pursue such remedies as are therein provided for said party. 3-12-63 (3.8.05)

I. Rules of Procedure

The Board of Adjustment shall adopt and promulgate rules of procedure for the guidance of all persons having business before the Board of Adjustment. Said rules shall not be inconsistent with the provisions of the Statutes of the State of New Hampshire nor with the provisions of this Ordinance. 3-12-63

J. Authorize Temporary Uses (deleted 3-12-91)

Section 6-4 Costs

Any person appearing before the Zoning Board of Adjustment may be represented by counsel, but the costs of retaining such counsel shall be borne by the party retaining them, and not by the Town of Amherst. 3-12-63

Section 6-5 Existing Ordinances

All existing ordinances or parts thereof inconsistent with the provisions of this ordinance are repealed upon passage of this ordinance. 3-12-63

Section 6-6 Severability Clause

If any section, subsection, sentence, clause, phrase or other part of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. 3-12-63

Section 6-7 Governmental Services

No provision of this Ordinance shall be interpreted as to prevent the Town of Amherst from providing for or performing any existing or necessary governmental, education, or protective services. 3-12-63

Section 6-8 Penalty

In accordance with RSA 676:17, as amended, any person, firm, or corporation violating the provisions of this Ordinance is punishable by a civil fine of up to \$100 (One hundred dollars) per day, for every day after the conviction date that the violation

continues, or after the date on which the violator received written notice from the municipality that is in violation, whichever date is earlier. 3-11-86

ARTICLE VII

AMENDMENTS TO THE ZONING ORDINANCE

Section 7-1 General

This Ordinance may be amended in conformance with the New Hampshire State Statutes. 3-12-63

This Ordinance is intended to be consistent with NHRSA enabling legislation and to the extent that any portion hereof is or shall become inconsistent with said enabling legislation this Ordinance shall be invalid to that extent. 3-5-74

Section 7-2 Referral of Amendments to Planning Board

Upon the petition of twenty-five voters for an amendment to the Zoning Ordinance, the Planning Board shall proceed and submit the amendment or amendments to the Voters of the Town as prescribed in RSA 675:4. The Planning Board may not reject the amendment or amendments proposed by petition but shall submit the proposed amendment or amendments to the voters as offered by the petition. The petitioners shall submit the proposed amendment or amendments to the Zoning Ordinance in correct form as determined by the Selectmen. The following question shall be submitted to the voters: " Are you in favor of the adoption of the amendment to the Zoning Ordinance as proposed by petition of the voters of this Town ?". The approval or disapproval of the Planning Board shall also be noted on the ballot immediately following the question. In the event that there shall be more than a single proposed amendment to be submitted to the voters at any given meeting, the issue as to the several amendments shall be put in the following manner: "Are you in favor of the adoption of Amendment No..... as proposed by petition of the voters for this Town?". (Here insert topical description of substance of amendment.) The approval or disapproval of the Planning Board shall also be noted on the ballot immediately following the question. An amendment proposed by petition shall be submitted to the voters at an annual Town or Village District meeting. 11-2-82

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8-1 Interpretation

In their interpretation and application, the provisions of this Ordinance shall be held as the minimum requirements adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, or Ordinances, the most restrictive, or that imposing the higher standards, shall govern.

Section 8-2 Short Title

This Ordinance shall be known and may be cited as "The Town of Amherst Zoning Ordinance of 1963".

Section 8-3 Effective Date

This Ordinance shall take effect immediately upon adoption.

Section 8-4 Impact Fee Ordinance

SECTION 1. PURPOSE

1.1 This ordinance is enacted pursuant to RSA 674:16 and 674:21, and in order to:

- Promote public health, safety, convenience, welfare, and prosperity;
- Ensure that adequate and appropriate facilities are available to individuals who may come to be located in the Town of Amherst;
- Prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;
- Provide for the harmonious development of the municipality and its environs;

- Ensure the proper arrangement and coordination of streets; and,
- Ensure streets of sufficient width to accommodate existing and prospective traffic.

SECTION 2. AUTHORITY

2.1 The planning board may, as a condition of approval of any subdivision or site plan, and when consistent with applicable board regulations, require an applicant to pay an impact fee for the applicant's fair share of off-site improvements to public facilities affected by the development. The term "impact fee" shall be as defined in RSA 674:21, V.

2.2 Nothing in this ordinance shall be construed to limit the existing authority of the Planning Board to disapprove proposed development that is scattered or premature, or that would require an excessive expenditure of public funds, or that would otherwise violate applicable ordinances and regulations. Nothing in this ordinance shall be construed to limit the planning board's authority to require off-site work to be performed by the applicant, in lieu of paying an impact fee, or the board's authority to impose other types of conditions of approval. Nothing in this ordinance shall be construed to affect types of fees governed by other statutes, town ordinances or regulations.

SECTION 3. ASSESSMENT METHODOLOGY

3.1 Proportionality: The amount of the impact fee shall be calculated by the planning board to be a proportional share of municipal capital improvement costs that is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

3.2 Existing Deficiencies: Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

3.3 Individual Assessments and Schedules of Impacts: The planning board may assess impact fees on an individual basis, or it may prepare and adopt schedules of impact fees for any municipal capital facility enumerated in RSA 674:21, V. If the planning board adopts a schedule of impact fees, then it shall use the schedule to assess impact fees for the particular municipal capital facility for which the schedule was prepared. If the planning board subsequently repeals a schedule of impact fees, the board may assess impact fees on an individual basis. The planning board's adoption of a schedule for one type of municipal capital facility shall not limit the authority of the planning board to assess and of the town to collect impact fees for other types of municipal capital facilities for which no schedule has been adopted, subject to the limitations of paragraphs 3.1 and 3.2 above. The adoption, amendment, or repeal of any impact fee schedule by the planning board shall be according to the procedures in RSA 675:6 and 7.

3.4 Waivers

The planning board may but has no obligation to grant full or partial waivers of impact fees where the planning board finds that one or more of the following criteria are met with respect to the particular capital facilities for which impact fees are normally assessed.

- a. The planning board may waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the planning board shall submit a copy of the waiver request to the board of selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. As a condition of the planning board granting such a waiver, the party seeking the waiver shall acknowledge in writing that the value of the contribution shall not be subject to the refund provisions of paragraph 4.3 below, and that the town of Amherst shall be under no obligation to recompense the developer or his successor in interest because of any failure of the developer or successor at any time to complete or undertake the development, in whole or in part, for which the impact fee would have been assessed.
- b. The planning board may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fee(s) waived.
- c. A person required by this ordinance to pay an impact fee (feepayer) may request a full or partial waiver of the amount of the impact fee for a particular development based on the results of an independent study of the demand on capital facility capacity and related costs attributable to that development. In support of such request, the feepayer shall prepare and submit to the planning board an independent fee calculation or other relevant study and supporting documentation of the capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the methodologies and schedules adopted by the town. The planning board shall review such study and render its decision. All costs incurred by the town for the review of such study, including consultant and counsel fees, shall be paid by the feepayer.
- d. The planning board may waive the assessment of impact fees in situations where, in its sole judgment, legitimate public purposes will be served by the waiver.

SECTION 4. ADMINISTRATION

4.1 Accounting: In accordance with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the town's general fund, may be spent upon order of the board of selectmen, and shall be used solely for the capital improvements for which they were collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fees were collected to meet.

4.2 Assessment, Collection, and Security: All impact fees required pursuant to this ordinance shall be assessed and collected, and any financial security required in the interim between assessment and collection, in a manner that is consistent with RSA 674:21, V.

4.3 Refund: Any portion of an impact fee that has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded, with any accrued interest, to the assessed party or successor in interest:

- When the subdivision or site plan approval expires under the respective rules of the planning board, or under the terms of the decision, without having become vested under RSA 674:39, and without any extension being granted by the planning board; OR
- When such approval is revoked under RSA 676:4-a; OR
- Six years after its collection, or, if any extension of development approval is granted by the planning board, six years after such extension is granted; OR
- Six years after its collection, whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the town, and the legislative body of the town has failed to appropriate the town's share of the capital improvement costs.

SECTION 5. APPEALS

In accord with RSA 676:5, III, appeals of the decision of the planning board in administering this ordinance may be made to superior court, as provided in RSA 677:15.

SECTION 6. EFFECTIVE DATE

This ordinance was adopted by the legislative body of the town of Amherst, acting at its duly warned annual meeting on March 6, 2004.

Section 8-5 Affordable Housing 3-14-89

ALLOWED BY CONDITIONAL USE PERMIT (3.6.04)

Innovative Land Use Control for Affordable Housing (see pages C5 thru C-8)

PURPOSE The Town recognizes the importance and benefit to the community and its citizens in the establishment and encouragement of suitable opportunities for affordable housing. The Town also recognizes that frequently, property that may be suitable as a location for affordable housing fails to meet some of the objective criteria that govern land use, and that strict adherence to all Zoning and Subdivision requirements may render the project economically unfeasible. The Town also recognizes that there are some situations in which normal Zoning or Subdivision requirements can be waived without necessarily sacrificing public health, safety and welfare so long as proper safeguards are maintained. Accordingly, it has been deemed advisable to adopt an innovative land use control in accordance with RSA 674:21 which would permit the Planning Board to identify a project that is a suitable candidate for the waiver of requirements, and when so identified, that project would be required to meet less stringent standards, provided certain criteria were met.

IDENTIFICATION OF SUITABLE PROJECT The Planning Board may review an application to construct affordable housing and identify the same as a suitable project if the applicant demonstrates to the Planning Board that the project meets the following criteria:

1. The project shall be constructed in a manner that is harmonious with neighboring developments, housing, and natural surroundings.
2. The project shall not detract from either the ecological or visual qualities of the environment.
3. The housing proposal shall be affordable within the meaning of the Ordinance.
4. The project shall comply with all site plan and/or subdivision regulations that apply, other than those waived hereunder.
5. Where there is no existing dwelling, the net tract area (total parcel minus wetlands) shall be at least four (4) acres and not more than fifteen (15) acres, except in the Northern Rural Zone, the net tract area shall be at least ten (10) acres but not more than twenty (20) acres. 3-12-91, 3-9-99
6. Where there is an existing dwelling, the net tract area (total parcel minus wetlands) shall be at least sufficient to provide a conforming conventional sized lot for the existing dwelling and the maximum net tract area shall be as listed above. 3-12-91

7. If an existing dwelling is located on the site and sufficient evidence is presented to the Planning Board to show that the existing dwelling is affordable within the meaning of this ordinance, than No. 6 shall not apply to that existing dwelling. (3- 10-98)

ZONING STANDARDS Once the Planning Board has designated a proposed project as affordable and indicated that the same is satisfactory and compliant with the above standards, that project may be located on any suitable property irrespective of the zoning district classification.

Maximum number of units approved in a calendar year shall not exceed one percent (1%) of the number of dwelling units existing in Town in the preceding calendar year. This figure shall be determined each January.

LOT SIZE, DENSITY, SETBACKS, AND OPEN SPACE The traditional lot size, density, setback, and open space requirements applicable in other districts shall not apply and the Planning Board shall establish the lot size, density, setbacks, and open space requirements for each project as they determine to be necessary in the best interest of the Town and to facilitate the project, provided however, that the following limitations shall apply:

1. Lot size and density shall be not less than three quarters (3/4) of an acre for a detached single family unit and not more than two units per acre for multi-family housing, except in the Northern Rural Zone where the minimum lot size for a detached single family unit would be two (2) acres and no more than one unit per acre for multi-family housing.
2. Open space shall be sufficient to accommodate the needs of the proposed occupants of the project.
3. Setbacks shall be sufficient to buffer and protect adjacent properties and the street from encroachment. At a minimum there shall be a fifty (50) foot setback from the property line around the perimeter of the property. (3.8.05)
4. No structure shall be constructed to a height greater than thirty five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation.
5. The maximum unit size shall not exceed 1,300 square feet of heated living space, excluding basement areas. This provision shall remain with the development for a period of ten years from the date of the first certificate of occupancy. 3-12-02

RULES AND REGULATIONS The Planning Board may adopt appropriate rules and regulations to implement the review process contemplated hereunder. Such rules shall at a minimum provide for the developer to restrict the sale or lease of the units through

appropriate recorded covenants to those who qualify pursuant to the definition of affordable housing contained in this Ordinance.

DEFINITION Affordable Housing shall be a residential dwelling unit available for sale or lease at a cost not to exceed the amount a household or family, whose gross annual income is one hundred percent (100%) or less of the median income. Median income is the amount defined by the U.S. Census for the Nashua Primary Metropolitan Statistical Area as updated yearly. Median income figures, adjusted for number of occupants, shall be determined annually by the Planning Board. 3-14-89 (3-10-98)

NOTE: See Non-Residential Site Review Regulations for Project Suitability Procedure Regulations. Affordable Housing.

ARTICLE IX

DEFINITIONS

Section 9-1 Meaning of Certain Words

The following terms, unless specifically indicated to the contrary in the Ordinance, shall mean the following:

Abutter Any person or persons holding legal title to land which adjoins or is directly across the street or stream from land under consideration. (3-12-63) 3-9-82

Accessory Building A detached building on the same lot with the primary building, the use of which is clearly incidental to that of the primary building or use of the land. 3-12-63

Administrative Official The person delegated by the Board of Selectmen to administer the provisions of this Ordinance. 3-12-63

Apartment A room or set of rooms arranged for occupancy as a dwelling and containing a kitchen or cooking range. 3-14-89

Aquifer A geologic unit capable of yielding usable amounts of water. 3-13-84

Building Any structure that has a roof and is intended to shelter people, animals or chattel. 3-12-63

Buffer An upland area immediately adjacent to a jurisdictional wetland or body of water, usually specified by a setback distance from the edge, that server to filter surface water flowing into the wetland or body of water. (3-13-01)

Cabin A building used or rented for the purpose of overnight sleeping accommodations, generally on a transient basis. 3-12-63

Driveway A private lane from the public road traversing private property, ordinarily leading to a single residence. 3-10-87

Dwelling A structure that is designed or used as a place of residence for one families. 3-12-63

Dwelling Unit A structure or part of a structure used as a place of residence for one family. 3-12-63

Family One or more persons who live as a single housekeeping unit in a dwelling unit. 3-12-63

Flashing Sign Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity or color at all times when in use including any revolving illuminated sign. 3-6-73

Floodway The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. 9-22-79

Floor Area Ratio The ratio of gross floor area to the total lot area. 3-4-75

Frontage: The continuous distance of any property line of a lot which abuts a legally accessible public street as classified by RSA 229:5, or a private road approved by the Planning Board. (3.6.04)

Garage Type Sales limited to a maximum of ten (10) days a year. The sum of the horizontal area of the several floors of a building and its accessory buildings on the same lot, measured from the exterior faces of the walls, and not including cellars, attics, porches, etc. not used as part of the principle use. 3-4-73

Hazardous or Toxic Material or Liquids Materials or liquids that pose a threat, present or future, to the environment, whether in use, storage or transit, including without exception hazardous waste identified and listed in accordance with section 3001 of the Resource Conservation and Recovery Act of 1976, and as may be amended from time to time. 3-13-84

Home Occupation - A home occupation is an accessory non-retail business or professional use incidental and subordinate to the dwelling use, occupying no more than 20% of the existing gross, heated floor area of the dwelling.
(As amended 3-2-80, 11-2-82) 3-10-92 3-11-93 3-8-94 3-14-95

Hotel/Motel Structure/s which provide transients with temporary sleeping accommodations and do not include individual units which provide housekeeping accommodations in more than 10% of the units.

House Trailer A unit similar to a mobile home which is equipped with some or all of the following: running water, sanitary facilities, bath facilities, and toilet. 3-12-68

Inn A structure intended or designed to be used or which is used for sleeping purposes or paying guests and where a general kitchen and/or dining room may or may not be provided. 3-12-63

Kennel Any lot or premises on which four (4) or more dogs, other than personal pets, at least four (4) months of age, are kept, boarded, or trained whether in special structures or runways or not. The foregoing definition shall specifically exclude veterinary clinics

which are defined as a structure in which small animals or pets are given medical or surgical treatment and are cared for during the time of such treatment only. 11-2-82

Lot A tract of land occupied or capable of being occupied by a building or use and by accessory uses, including the open space provided for in this Ordinance. 3-12-63

Lot of Record A distinct tract of land recorded in a legal deed and plan filed in the records of Hillsborough County, New Hampshire. 3-12-63

Minimal Impact Crossing Minimal impact means the least environmentally damaging practicable alternative.

Mixed Use Development Any proposed or existing commercial development may have incorporated, a mixed use factor, consisting of residential units up to a maximum of twenty-five (25%) percent of the approved gross square footage of the commercial development. The residential units may be either attached or detached from the commercial structure/s and may have a maximum of one bedroom per five hundred (500) square feet of gross residential floor area. Such proposals are subject to Planning Board site review and all applicable health and safety requirements. 3-14-89

Mobile Home A dwelling accommodation designed to permit movement as a vehicle with or without wheels or skids in place and which is equipped with running water, sanitary facilities, bath facilities and toilet.

Multi Family Housing A structure or parcel of land containing more than one dwelling unit. 3-13-90

Non-Conforming Use A structure or land area that is lawfully occupied by a use that does not conform to the specifications of this Ordinance. 3-12-63

Open Space – As stated in Article IV, the Commercial, Limited Commercial and Industrial Zone shall not be utilized for construction, storage or parking/drives. (3-13-01)

Open Space Development Eliminated 11-2-82 3-14-89

Open Space Plan

ALLOWED BY CONDITIONAL USE PERMIT (3.6.04)

PURPOSE To provide for an alternative single-family development plan that would provide areas of open space, reduce the amount of road maintained by the Town, allow a predictable rate of development, and keep the integrity of existing zone densities intact.

DENSITY: The basic number of lots allowed per parcel:

Option A: The basic number of lots is the same as would be obtainable for a conventional subdivision of the same parcel using the existing Town Zoning and Subdivision Regulations and having public roads. The applicant shall provide the Planning Board with a Preliminary Plan of the parcel to establish the basic number of lots.

Option B: The basic number of lots is the same as would be obtainable for a conventional subdivision of the same parcel using the existing Town Zoning and Subdivision Regulations and having private roads. The land area used for the private roads may be divided by the minimum lot area and the resulting number is to be added to the basic number of lots. The applicant shall provide the Planning Board with a Preliminary Plan of the parcel including the area of land used for private roads to establish the basic number of lots.

Minimum Parcel Area: 10 acres in the Residential/Rural Zones. 25 acres in the Northern Rural and Northern Transitional Zones
Minimum Lot Area:

Minimum Lot Area: 40,000 square feet in the Residential/ Rural, Northern Rural, and Northern Transitional Zones. In the Northern Rural and Northern Transitional Zones, the average minimum lot area shall be 80,000 square feet, with a maximum lot area of five acres allowed for purpose of calculating the average minimum lot area.

Minimum Lot Frontage and Width: 100 feet at the edge of the road right-of- way with a width of 150 feet at the front structure setback line in the Residential and Rural Zones. 150 feet at the edge of the road right-of-way with a width of 200 feet at the front structure setback line in the Northern Rural and Northern Transitional Zones. No Class A or Class B reduced frontage lots shall be allowed in an Open Space Plan.

Front Structure Setback: 100 feet from existing Town roads and 75 feet from proposed roads in the Residential and Rural Zones, 300 feet from existing Town roads and 75 feet from proposed roads in the Northern Rural and Northern Transitional Zones.

Side and Rear Structure Setback: 30 feet in the Residential and Rural Zones. 40 feet in the Northern Rural and Northern Transitional Zones.

Cul-de-sac Turnaround Lot Frontage: 75 feet at the edge of the road right-of-way.

Slopes and Wetlands: No wetlands, no flood plain as defined in Art. IV, Sec. 4-10, or slopes over 20% will be used to compute the minimum lot area. No dwelling will be constructed on slopes over 15%. (3.6.04)

Number of Lots Per Minor Dead End Cul-de-sac: Twelve (12)

Open Space: The open space shall be of a shape and size to be of value as land suitable for outdoor non-commercial recreation and conservation. No open space will be disturbed or developed except with the approval of the Planning Board. The minimum area shall be the basic number of lots times 0.75 in the Residential and Rural Zones and time 2.0 in the Northern Rural and Northern Transitional Zones. Open space shall be permanently restricted from further subdivision as building lots. 3-13-90

Phasing: The Open Space Plan shall have a reasonable phasing plan based on the Town of Amherst Master Plan and Capital Improvements Plan and be defined in a maximum number of dwellings constructed (Building Permits) each twelve (12) month period commencing with the date of the first permit.

Minor Dead End Cul-de-sac. A road that does not carry traffic from other roads.

Major Dead End Cul-de-sac. A road that may carry traffic from other roads to existing Town roads.

Private Road. A road constructed to the Town of Amherst Subdivision Standards but that may have a reduced width right-of-way and roadway surface. The Planning Board shall require adequate covenants, restrictions, and agreements including a Home Owners Association to insure that the Town will have no liability or responsibility to maintain said road.

Public Water Protection Wetlands Wetlands identified in Section 4-11 for their critical role in protecting water supplies.

Turnaround. The end area of a cul-de-sac used to reverse direction. 3-14-89

Parking Space. An off-street space available for the parking of one motor vehicle and have an area of not less than 9' x 18' not including the driveways and passageways appurtenant thereto and giving access thereto and having direct access to a public way. (3-12-63) 3-12-85.

Planned Residential Development (PRD) 11-2-82

ALLOWED BY CONDITIONAL USE PERMIT (3.6.04)

PURPOSE: Planned Residential Development allows an alternative pattern of land development to the pattern permitted in the Residential/Rural, Northern Rural, Northern Transitional and Commercial Zones. It is intended to encourage the preservation of open space and, at the same time, provide for a greater variety of housing types and affordability in the Town of Amherst at somewhat greater densities than permitted elsewhere in the Zoning Ordinance, without causing a significant increase in the town-wide population density. It is envisioned that in a PRD, dwelling units will be constructed in clusters which are harmonious with neighborhood developments and housing, and with natural surroundings. These

clusters shall detract neither from the ecological and visual qualities of the environment, nor from the value of the neighborhood, environment, or the Town. The PRD should contain a variety of housing types to accommodate the Master Plan purposes of encouraging a diversity of people, a variety of age groups of different interests, backgrounds, and economic levels. The overall site design and amenities should enhance the quality of living for the residents of the development and, in general, the neighborhood and the Town. The Board shall determine whether the proposed PRD, namely the site plan or layout, and number, type, and design of the proposed housing is suitable to the neighborhood within which it is to be located and is consistent with the Master Plan and its reasonable growth objectives. 3-14-89

CONDITIONS:

An applicant for approval of a proposed PRD shall make application to the Planning Board in the same fashion as specified in the Subdivision Regulations. In the course of review of the proposal by the Planning Board, the Board shall hear evidence presented by the applicant and determine whether, in its judgment, the proposal meets the objectives and purpose set forth above, in which event the Board may grant approval to the proposal subject to such reasonable conditions and limitations as it shall deem appropriate.

MINIMUM LOT AREA:

Planned Residential Developments may be permitted on single or adjacent tracts -of land, under one ownership, or to be brought under one ownership, which have a net tract area of no less than twenty (20) buildable, non-wetland acres in the Residential/Rural, and Commercial Zones, and thirty (30) buildable, non-wetland acres in the Northern Rural Zone, and twenty-five (25) buildable, non-wetland acres in the Northern Transitional Zone. Net tract area shall mean the total area of the tract or tracts less the area in the Wetlands Conservation District, Flood plain Conservation District, areas of slope equal to or greater than 20%, and soils with severe limitations as defined by the United States Department of Agriculture Soils Survey Interpretation Sheets of 1973, 1975 or 1976. On-site determination of soil types may be conducted at the request of the Board by an agent of the Hillsborough County Soil Conservation Service or a qualified soils scientist approved by the Town of Amherst. Only soils with slight or moderate limitations shall be included in the net tract area. PRDs may be built only on the net tract area. 3-14-89 (3-12-02) (3.6.04)

DENSITIES:

In a Planned Residential Development, density shall be determined by the following methods. In the Residential/Rural, and Commercial Zones, divide the net tract area by two (2) and multiply the result by four (4) if soils are of slight

limitation, or three (3) if more than 50% of the net tract area is of moderate limitation. 3-10-87

In the Northern Rural Zone, divide the net tract area by 3.75 if more than 50% of the net tract area is classified as slight (multiply by four); or by 4.25 if more than 50% of the net tract area is classified as moderate (multiply by three). 3-10-87

In the Northern Transitional Zone, divide the net tract area by 2.88 if more than 50% of the net tract area soil is classified as slight (multiply by 4); or by 3.13 if more than 50% of the net tract area soil is classified as moderate (multiply by 3). 3-14-89

The result of these calculations shall be a number of bedrooms permitted in the entire development. "If bonuses, as explained below, are granted, the total number of bedrooms shall not exceed one and one-half the number of bedrooms calculated above. The number of bedrooms permitted in any PRD shall be determined by the Board to assure compliance with the purpose of PRD and shall not exceed the limit determined above. 3-10-87

For the purpose of this Ordinance, a bedroom may mean any room other than a kitchen, bathroom, living, or small utility room. In the review of the floor plan or plans, the Board, when appropriate, may deem floor space shown on said plans to constitute the number of bedrooms which could be reasonably built in that space, as opposed to the number of bedrooms shown. The Board may designate a room not to be a bedroom if it is clear that its use as a bedroom is unlikely in view of the layout of the unit or overall character of the PRD. The number of said bedrooms that shall be permitted in any one of the units proposed shall be fixed by the Board before the approval of the Final Review. The Board shall also approve the external architectural design of the PRD to ensure its compliance with the goals of this Ordinance as stated in the section on PURPOSE. The number of bedrooms permitted in the PRD shall be noted on the Final Plat. 3-13-84

All of the above notwithstanding, the total number of dwelling units within the PRD shall not exceed the total number of acres calculated as the net tract area. 3-10-87

PERMITTED USES:

There may permitted in any PRD, single family detached and single family attached, and multi-unit structures of any type without regard to dwelling unit configuration or form of ownership. It is envisioned that the housing types, while having different internal configurations, will have an external appearance that complements and is in general harmony with the natural surroundings of the PRD. Up to 10% of the dwelling units may be mobile homes. The maximum height of any dwelling structure shall be thirty-five (35) feet, exclusive of chimneys or

cupolas, measured from the lowest adjacent exterior elevation. For the purposes of this Ordinance, the following definitions shall apply:

Single Family Detached Dwelling Unit - any building designed for and occupied by not more than one family and which is not attached to any other dwelling unit by any means.

Single Family Attached Dwelling Unit - a single family dwelling attached to one other single family dwelling by a common vertical wall.

Multi-unit Structure - a building which contains from three (3) to six (6) dwelling units.

The Board shall determine the mix of housing types, number of dwelling units and structures, and the number of bedrooms for each dwelling unit. These shall be determined at the Final Review and be noted on the Final Plat.

OPEN SPACE:

All land in the PRD which is not covered by buildings, septic systems, wells, paved areas, service areas, or which is not set aside as private yards, patios, or gardens for the residents shall be treated as open space. The area of the open space shall be at least 40% of the total area of the PRD tract. Such land shall have a shape dimension, character, and location suitable to assure its use for park, recreation, conservation, or agricultural purposes by at least all the residents of the PRD.

Provisions shall be made for the open space to be held in common, equally, by all the owners of the PRD. Such provision shall further hold that all the open space shall be readily accessible to all the residents of the PRD and that such open space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation, or park. No building or construction whether it be structures or septic systems shall take place in the open space. Harvesting of trees in the open space is permitted if it is done according to good forestry practice and with the expressed permission of the Planning Board. 3-13-84

BONUSES: 3-10-98

The Board shall review the proposed PRD and consider the extent to which it meets or addresses the objectives set forth in this ordinance and may, in its judgment, grant density bonuses not to exceed those indicated below.

Item	Maximum % Increase in Density
Recreation Facilities	5%
Phasing	5 Years - 10%

Conservation	10 Years - 20% 5% for each 5% of net tract area places in conservation easement and/or set aside for trails to integrate with the Town trail system as determined by the Conservation Commission.
Low and Moderate Cost Housing	30% if between 20% and 40% of the total number of bedrooms which are located with dwelling units which are low to moderate cost housing.
Bedroom Count	40% if the units are of one or two bedrooms (3-13-01)

ARCHITECTURAL DESIGN:

As a condition of final approval, the applicant must obtain the Board's approval of the external architectural design of the PRD to ensure that it complies with the goals of harmonious existence with the neighborhood and the environment as stated in the paragraph on PURPOSE at the beginning of this Ordinance. The approval of the architectural design shall be a part of the Final Review approval.

LIMITATION OF SUBDIVISION:

No lot shown on a plan for which a permit is granted under this Ordinance may be further subdivided and a note to this effect shall be placed on the Final Plan.

OTHER PROVISIONS:

If lots are to be created within the PRD, then such individual lots shall be a minimum of 3/4 acres if on-site well and septic system are to be provided, or 1/2 acre if water is to be provided by off-site water supply system. Each PRD shall be subject to the Subdivision Regulations. Where there are differences between the PRD requirements and the Subdivision Regulations, the requirements of the PRD shall prevail. All other regulations and restrictions not specifically mentioned in this Ordinance shall be those of the Zone in which the PRD is located. At a minimum there shall be a fifty (50) foot setback from the property line around the perimeter of the property. (11-2-82) 3-13-90 3-10-98

(3.8.05)

Principal Route of Access A principal route of access within the meaning of this Ordinance shall be deemed to consist of any road, street, highway which is maintained. 3-3-75

Primary Recharge Area The area immediately overlying the stratified drift aquifer and adjacent areas of stratified drift which may not have sufficient thickness to be part of the

Aquifer. The boundary of the primary recharge area is the contact between stratified drift and adjacent till or bedrock. 3-13-84

Private Road A road or road system layout, on private property, from the public road to the development. Such private property and private road shall be permanently encumbered with deed restrictions, satisfactory to Town Counsel, which shall insure that the private road does not become a Town road. 3-10-87

Professional Office A professional office shall be one, or a combination of the following type: doctors, dentist, lawyers, engineers, surgeons, veterinary clinic, accountants, architects.

Reduced Frontage

A minimum of thirty-five (35) feet of frontage on a publicly maintained road. There are two classes of reduced frontage :

Class A frontage provides access to one building lot

Class B frontage provides access to two building lots 3-10-87

(See Section 5-2, Subdivision Regulations re: Reduced Frontage Lots)

Seasonal Any non-residential use which is intended to operate only during specific periods of the year. Such use may include temporary structures. Seasonal uses shall be subject to site plan review. Planning Board may also require removal of any temporary buildings or other structures during the off-season. 3-11-93

Secondary Recharge Area The land adjacent to primary recharge area from which ground water moves down a gradient into the aquifer. 3-11-84

Shopping Center A group of businesses centrally arranged and identified by a common ground sign. 3-13-90

Sign (3-12-63) See Section 3-4 3-12-91

Sign Advertising (3-12-63) See section 3-4, Off premise Signs 3-12-91

Special Exception Use A use which because of its unique characteristics requires individual consideration in each case before it can become permitted in the Zone enumerated. 3-12-63

Story That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above . (Crawl spaces, unfinished and unoccupied attic spaces, cellars when not to be occupied shall not be considered a story.) 3-11-86

Structure Anything constructed or assembled. The term structure shall not include radio towers or antennae which are for the exclusive use of amateur radio service and they shall be limited to a total height of 150 feet. (3-12-63/3-9-82) 3-12-85

Temporary Structure Any structure designed to be movable or disassembled, which does not permanently alter the land or buildings on the lot. Temporary structures shall not have utilities or plumbing. Such structures shall be subject to ordinary requirements of the zone (setbacks, floor area ratio, green space, height, etc.) and may require non-residential site review. 3-11-93

Utility Any public service subscribed to by an owner and/or tenant of a site which does not require surface transportation. 11-2-85

Water Resource Management Plan A written plan containing maps, base line data, and provisions for the protection of surface water, ground water and important wildlife resources associated with a development project.